SUPREME COURT, U.S.
No. 71-227
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In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

ALLEGHENY-LUDLUM STEEL CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	4
The questions are substantial	7
Conclusion	12
Appendix A: Opinion of the district court	13
Appendix B: Judgment of the three-judge district court	27
Appendix C: Report of the Interstate Commerce Commission	28
Appendix D: Commission's order of February 18, 1970	169
Appendix E: Commission's Order of March 18, 1970	180
Appendix F: June 7, 1971, decision of three-judge Florida court	184
Appendix G: Notice of appeal by the United States	204
Appendix H: Notice of appeal by the Interstate Commerce Commission	206

CITATIONS

Cases:

American Trucking Assns. v. *Atchison, Topeka & Santa Fe R. Co.*, 387 U.S. 397	11

Cases—Continued

	Page
American Trucking Associations v. *United States*, 344 U.S. 298	10
Bingler v. *Johnson*, 394 U.S. 741	8
Chicago, B. & Q. R. Co. v. *New York, S. & W. R. Co.*, 332 I.C.C. 176, sustained on review *sub nom. Union Pacific R. Co.* v. *United States*, 300 F. Supp. 318, and *Boston and Maine Railroad* v. *United States*, 297 F. Supp. 615, affirmed *per curiam*, 396 U.S. 27	4-5
City of Chicago v. *United States*, 396 U.S. 162	2
Consignee's Obligation To Unload Rail Cars In Compliance With Carriers' Published Tariffs, (Docket No. 35237, decided Feb. 18, 1970), appeal pending *sub nom. A. E. Staley Mfg. Co.* v. *United States* (C.A. No. 4-69 Civ. 459, D. Minn.)	5
Florida East Coast Ry. v. *United States*, M. D. Fla., No. 70-182-Civ-J, decided June 7, 1971	7, 9, 11, 184
Incentive Per Diem Charges—1968, 337 I.C.C. 183 and 217, sustained on review *sub nom. Long Island R. Co.* v. *United States*, 318 F. Supp. 490, reversed and remanded in *Florida East Coast Ry. Co.* v. *United States*, and *Seaboard Coast Line R. Co.* v. *United States*, 322 F. Supp. 725, appeal docketed, No. 70-279	— 5
Southern Ry. Co. v. *United States*, 250 F. Supp. 759, reversed, 380 F. 2d 49	11
United States v. *O'Malley*, 383 U.S. 627	8

Cases—Continued

	Page
United States v. *Southern Ry. Co.*, 364 F.2d 86, certiorari denied, 386 U.S. 1031	5
United States v. *Tucker Truck Lines*, 344 U.S. 33	9

Statute:

Interstate Commerce Act, Section 1(14)(a), as amended, 49 U.S.C. (Supp. V) 1(14)(a)	3

Congressional and Miscellaneous:

84th Annual Report of the Interstate Commerce Commission (1970)	8
"Code of Car Service Rules" of Association of American Railroads	6
Hearings before the Freight Car Shortage Subcommittee of the Senate Committee on Commerce, 89th Cong., 1st Sess.	4
2 *Weekly Compilation of Presidential Documents* 690	4

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OPINIONS BELOW

The opinion of the district court (App. A, *infra*, pp. 13-26) is reported at 325 F. Supp. 352. The report of the Interstate Commerce Commission (App. C, *infra*, pp. 28-168) is published at 335 I.C.C. 264. The Commission's order of February 18, 1970 (App. D, *infra*, pp. 169-179) is published at 335 I.C.C. 874, and its order of March 18, 1970 (App. E, *infra*, pp. 180-183) is unreported.

JURISDICTION

The judgment of the three-judge district court was entered on March 18, 1971 (App. B, *infra*, p. 27). Notices of appeal were filed by the United States and the Interstate Commerce Commission on May 17, 1971 (App. G and H, *infra*, pp. 204-207). On July 9, 1971, Mr. Justice Brennan extended the time for docketing the appeal to and including August 15, 1971. The jurisdiction of this Court is conferred by 28 U.S.C. 1253. *City of Chicago* v. *United States*, 396 U.S. 162.

QUESTIONS PRESENTED

The ultimate question presented is whether the district court erred in enjoining the enforcement of certain car service rules promulgated by the Interstate Commerce Commission, which generally require that freight cars be returned either loaded or empty in the direction of the railroads that own them, so as to increase the availability of freight cars to their owners. This involves the following subsidiary questions:

1. Whether the court below erred in holding that the general and pervasive shortage of freight cars on virtually all railroads is an insufficient predicate for the imposition of the car service rules, in the absence of explicit findings of shortages on the owner railroads, and of the financial ability of affected railroads to increase their car supply.

2. Whether the court below erred in holding that the practical necessity for some exceptions in the

day-to-day administration of the car service rules, recognized and provided for by the Commission, renders the rules invalid.

STATUTE INVOLVED

Section 1(14)(a) of the Interstate Commerce Act, as amended (49 U.S.C. (Supp. V) 1(14)(a)), provides:

> The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including the compensation to be paid and other terms of any contract, agreement, or arrangement for the use of any locomotive, car, or other vehicle not owned by the carrier using it (and whether or not owned by another carrier), and the penalties or other sanctions for nonobservance of such rules, regulations, or practices. In fixing such compensation to be paid for the use of any type of freight car, the Commission shall give consideration to the national level of ownership of such type of freight car and to other factors affecting the adequacy of the national freight car supply, and shall, on the basis of such consideration, determine whether compensation should be computed solely on the basis of elements of ownership expense involved in owning and maintaining such type of freight car, including a fair return on value, or whether such compensation should be increased by such incentive element or elements of compensation as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service prac-

tices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. The Commission shall not make any incentive element applicable to any type of freight car the supply of which the Commission finds to be adequate and may exempt from the compensation to be paid by any group of carriers such incentive element or elements if the Commission finds it to be in the national interest.

STATEMENT

This case involves one of a series of orders issued by the Interstate Commerce Commission at approximately the same time which attempt to meet the problems of freight car supply and distribution on the nation's railroads. Faced with an ever-increasing shortage of freight cars, which has been the subject of presidential [1] and congressional [2] concern, the Commission has sought to alleviate the crisis and to make more cars available for the use of shippers by such devices as establishing a new schedule of payment for the use by one railroad of another's cars (basic per diem); [3] adding an "incentive" element to the

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[1] See President Johnson's remarks upon signing P.L. 89-430, May 26, 1966, published in 2 *Weekly Compilation of Presidential Documents*, p. 690.

[2] See Hearings before the Freight Car Shortage Subcommittee of the Senate Committee on Commerce, 89th Cong., 1st Sess.

[3] *Chicago, B.& Q. R. Co.* v. *New York, S. &W. R. Co.*, 332 I.C.C. 176, sustained on review *sub nom. Union Pacific R. Co.* v. *United States*, 300 F. Supp. 318 (D. Neb.), and *Boston and*

basic per diem charges to encourage the prompt return of equipment found to be in short supply;[4] promulgating rules requiring the complete unloading of boxcars, free of debris and dunnage, to permit more prompt reuse of the cars;[5] and increasing the use of its emergency powers to remedy critical equipment shortages.[6]

The car service rules here at issue were promulgated upon the basis of an extensive investigation into all phases of freight car ownership and the rules and practices governing their utilization and distribution (App. C, *infra*, p. 29). Finding that a car owner currently receives the use of its own cars on an average of less than once each month (App. C, *infra*, p. 55), the Commission concluded that there is little incentive for railroads to purchase larger fleets of general service freight cars, or to maintain the cars in good repair when the principal beneficiaries frequently are other lines *(ibid.)*. Indeed, the

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Maine Railroad v. *United States*, 297 F. Supp. 615 (D. Mass.), affirmed *per curiam*, 396 U.S. 27.

[4] *Incentive Per Diem Charges—1968*, 337 I.C.C. 183 and 217, sustained on review *sub nom. Long Island R. Co.* v. *United States*, 318 F. Supp. 490 (E.D.N.Y.), and reversed and remanded in *Florida East Coast Ry. Co.* v. *United States*, and *Seaboard Coast Line R. Co.* v. *United States*, 322 F. Supp. 725 (M.D. Fla.), appeal docketed, No. 70-279.

[5] *Consignee's Obligation To Unload Rail Cars in Compliance With Carriers' Published Tariffs* (Docket No. 35237, decided Feb. 18, 1970), appeal pending *sub nom. A. E. Staley Mfg. Co.* v. *United States* (C.A. No. 4-69 Civ. 459, D. Minn.).

[6] See, *e.g.*, *United States* v. *Southern Ry. Co.*, 364 F.2d 86 (C.A. 5), certiorari denied, 386 U.S. 1031.

Commission noted that a railroad that owns a sufficient number of cars to satisfy its own shippers (hereinafter "owner lines") may suffer more serious shortages than lines with a deficient ownership of cars (hereinafter "non-owner lines") *(ibid.)*.

The rules promulgated by the Commission, adapted from a "Code of Car Service Rules" long maintained by the Association of American Railroads (AAR), require that empty freight cars be returned, with or without a load, in the direction of the owning line.[7] Such rules, the Commission found, will in the long run reduce empty car miles (App. C, *infra*, p. 67) and, moreover, will place the improved utilization of cars within the control of the owner who can then provide for the needs of its shippers for whom the equipment was acquired (App. C, *infra*, p. 65). Recognizing that a need for exceptions to the rules may arise, the Commission authorized the railroads to resolve inequities by negotiation (App. C, *infra*, p. 65; App. D, *infra*, p. 172), and further empowered certain Commission officials to authorize exceptions "for the purpose of further improving car supply and utilization, increasing availability of cars to their owners, improving the efficiency of railroad operations, or alleviating inequities or hardships" (App. D, *infra*, p. 172).

On review of the Commission's order, the district court agreed that there is substantial evidence of a

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[7] Rules 1 and 2, which the district court enjoined the Commission from enforcing, are reproduced in the district court's opinion (App. A, *infra*, pp. 15-16, n. 3).

general freight car shortage (App. A, *infra*, p. 20). The rules requiring the return of cars in the direction of the owning line were nevertheless held invalid on the grounds that the Commission had not found that the shortage was more acute on the owner lines than on non-owner lines (App. A, *infra*, p. 19), and that the Commission had failed to consider the financial capability of the railroads to augment their freight car supply (App. A, *infra*, p. 21). Noting that the Commission had conceded that as a practical matter there could not be complete observance of the mandatory rules, the district court also found it objectionable that the imposition of criminal penalties could be dependent upon Commission officials' determinations whether to grant exemption from the rules in certain instances (App. A, *infra*, p. 25).

On June 7, 1971, after the court below had decided this case, another three-judge district court sitting in Florida upheld the same rules, expressly refusing to follow the decision of the district court in this case. *Florida East Coast Ry.* v. *United States*, M.D. Fla., No. 70-182-Civ-J (App. F. *infra*, pp. 184-203), notice of appeal filed August 3, 1971.

THE QUESTIONS ARE SUBSTANTIAL

1. Probable jurisdiction should be noted in order to resolve the conflicting decisions of the two district courts concerning the validity of the Commission's car service rules. The rules at issue govern the disposition of freight cars of all the nation's railroads. Such rules must be uniformly applied to all roads to

avoid discrimination and inequities. In their current posture, the rules have been sustained by a district court in Florida and invalidated by a district court in Pennsylvania. The uncertainty arising from these conflicting lower court decisions warrants plenary review and resolution by this Court. Cf. *United States* v. *O'Malley*, 383 U.S. 627, 630; *Bingler* v. *Johnson*, 394 U.S. 741, 748.

Apart from the conflict in the district courts' decisions, this case presents important issues of federal transportation law having pervasive effect upon all rail carriers, as well as shippers and consumers, in the nation. The seriousness of the current freight car shortage cannot be doubted. Between 1955 and 1964, the total number of freight cars owned by railroads in the United States declined by some 210,000, or more than 12 percent (App. C, *infra*, at p. 36). The decline in ownership of general service boxcars was even more precipitous, falling more than 22 percent during that 10-year period *(ibid.)*. This decline in the number of cars was only partially offset by a corresponding increase in the size or capacity of the cars in use; during the same period the aggregate capacity of freight-carrying cars declined by approximately 5 percent *(ibid.)*.[8] As a result, what was once a freight car shortage only during certain peak shipping months of the year has become a critical year-around shortage (App. C, *infra*, p. 43). While

[8] The trend has continued unabated since the close of the record in this case, and no sign of improvement is apparent (see 84th Annual Report of the Interstate Commerce Commission at 131 (1970)).

the car service rules here at issue do not offer a complete solution, they are an important part of the Commission's total effort to alleviate the car shortage problem that continues to plague the nation.

2. The district court's objections to the rules are not well founded.

a. The court below erroneously held that a rule requiring the return of cars in the direction of the owning road must be predicated upon a specific finding of special car shortages on the owner lines (App. A, *infra*, p. 20), and faulted the Commission for failure to make such a finding.[9] But, as the three-judge district court in Florida recognized in *Florida East Coast Ry., supra*, the "question is not * * * whether the shortage on the owner lines is more acute, but rather who should get first call on the use of cars during a shortage" (App. F, *infra*, p. 201). The Commision's policy determination that, during a period of general car shortages, the owner lines should be afforded maximum use of their own cars (App. F, *infra*, p. 200), thus encouraging the purchase of additional cars by those lines that presently own an insufficient supply to meet the needs of their own shippers, was reasonable and an appropriate exercise of its judgment and discretion.

b. The lower court further held the car service rules invalid for failure "to consider the financial

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[9] This issue was never raised before the Commission; and thus was not properly before the district court. *United States v. Tucker Truck Lines*, 344 U.S. 33, 35.

effects upon the [non-]owner-lines [10] and the shipping public" (App. A, *infra*, p. 25). But given the chronic and pervasive freight car shortages, the Commission was justified in imposing car service rules designed to maximize the use of freight cars by their owners. In the absence of such rules, owner railroads and the shippers for whom those railroads purchase equipment would be penalized while non-owner railroads enjoyed the use of that equipment. The court below failed to recognize that placing the burden on railroads whose car supply is inadequate is not only equitable, but also provides an incentive for all railroads to maintain adequate car supplies (see App. C, *infra*, p. 55). Moreover, if the prompt return of cars to their owners would unduly burden a railroad in particular instances, it could apply for an exception—as expressly provided for by the Commission's rules to alleviate hardships.

The financial effect upon shippers was—contrary to the statement of the district court—expressly considered by the Commission, which concluded that any burden on shippers in terms of "extra switching and short delays" is overbalanced by the "overall benefit to be derived when originating lines obtain quick return of their system cars" (App. C, *infra*, p. 67). Thus the Commission "applied its familiarity with transportation problems to these conflicting considerations," *American Trucking Associations* v. *United States*, 344 U.S. 298, 314, and its conclusion that

[10] The court's opinion reads "owner-lines", but it is clear from the context that it meant to refer to non-owner lines.

the overall effect of the rules would be beneficial to both the carriers and the shipping public was an appropriate exercise of its "judgment in light of current facts," *American Trucking Associations* v. *Atchison, Topeka & Santa Fe R. Co.*, 387 U.S. 397, 410.

c. Finally, as the district court in Florida recognized in *Florida East Coast Ry., supra*, the fact that exceptions to the rules may be required in specific situations does not foreclose the Commission from promulgating a mandatory rule where, as here, adequate provision is made for granting such exceptions (App. F, *infra*, p. 201). And, contrary to the district court's apparent belief (App. A, *infra*, p. 25), criminal penalties do not automatically attach to every instance of non-compliance, since proof of criminal intent continues to be a necessary element of a criminal violation. Compare *United States* v. *Southern Ry. Co.*, 250 F. Supp. 759, 770 (D.S.C.), reversed on other grounds, 380 F. 2d 49 (C.A. 4).

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

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AUGUST 1971.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-731

ALLEGHENY LUDLUM STEEL CORPORATION, ET AL.

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Before ALDISERT, *Circuit Judge*, MARSH, *Chief District Judge*, and MILLER, *District Judge*.

OPINION OF THE COURT
[Filed March 18, 1971]

ALDISERT, *Circuit Judge.*

The Interstate Commerce Commission has promulgated mandatory rules governing the manner in which empty freight cars in the possession of non-owning railroads are to be returned to their owners. Before us is an action brought by fifteen steel producers and the American Iron and Steel Institute[1] seeking to enjoin, annul and set aside the order. We must determine whether the Commission's order is supported by "substantial evidence" and satisfies the statutory test of reasonableness. 49 U.S.C. § 1(14)(a).

[1] The American Association of Railroads, The National Industrial Traffic League and The National Association of Shippers Advisory Boards have been granted leave to intervene in this action.

The rules under review derive from a lengthy study begun in December, 1963, in which the Commission undertook to ascertain the adequacy *vel non* of the nation's supply of railroad freight cars. There followed on June 1, 1964, an announcement by the Commission's Division Three that there existed "a substantial inadequacy" of freight car ownership among America's railroads. 323 I.C.C. 48 (1964). At the same time, the Commission issued a formal notice of proposed rulemaking, pursuant to Section 1(14)(a) of the Interstate Commerce Act, 49 U.S.C. § 1(14)(a), broadening its inquiry to include all phases of car ownership, utilization, and distribution with a view toward alleviating the car shortage problem.

A seven-year study followed. Thirty verified statements were submitted by interested parties. In response to a verified statement by C. C. Robinson, of the Commission's Bureau of Enforcement, which advocated mandatory observance of car service rules promulgated by the railroad industry,[2] at least twenty corporations and shippers' associations, including the steel plaintiffs, obtained leave to intervene. They filed reply verified statements and were joined by twenty-five railroads, the American Short

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[2] A Code of Car Service Rules was established by the railroad industry more than half a century ago, when the free interchange of cars among rail lines became a widespread practice. In 1916, a Railroad Commission on Car Service was created to expedite observance of these rules by recalcitrant lines. Nonetheless, except for a brief period in 1917 and periodic emergency service orders since, compliance with the rules has remained voluntary. Even when the I.C.C. in 1947 ordered the railroads to file service rules with the Commission, no mandatory observance was required. Thus, the rules have served since their inception largely as guidelines to assist the carriers in their dealings *inter se*.

Line Railroad Association, The Association of American Railroads and many shipping interests. Over eighty-five reply verified statements were received.

A hearing before an examiner commenced on March 28, 1967, extended 50 days and produced almost 6,000 pages of testimony. The hearing examiner filed a 63-page report recommending discontinuance of the proceeding. He concluded:

> the record does not contain competent evidence upon which to base a conclusion as to the adequacy of freight car ownership; and that the adoption of the proposed car ownership formula, regulations, and car service rules has not been shown to be justified.

Eighteen months thereafter, in August, 1969, Division Three of the Commission reached a contrary conclusion, finding that the railroads lacked an adequate supply of freight cars, and ordering that car service rules 1 and 2 be mandatorily observed in order to increase car ownership by the railroads.[8] In

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[8] Rule 1:

Foreign cars, empty at a junction with the home road, must be:

a. loaded at that junction to or via home rails, or,
b. delivered empty at that junction to home road, except in instances where Rule 6 has been invoked, or unless otherwise agreed by roads involved.

Rule 2:

Foreign empty cars other than those covered in Rule 1 shall be:

a. loaded to or via owner's rails,
b. loaded to a destination closer to owner's rails than is the loading station or delivered empty to a short line or switch loading road for such loading (Car

February, 1970, the I.C.C. modified its order to permit certain exceptions to the Rules and to extend the effective date. In July, 1970, this court issued an order restraining enforcement of the order pending a determination in these proceedings.

At the threshhold we are met with certain settled principles of law. Because the decision of the Commission carries a presumption of validity, the plaintiffs have the burden of showing that it is invalid. *Waite* v. *United States*, 161 F.Supp. 856, 860 (W.D. Pa. 1958); *W. J. Dillner Transfer Co.* v. *I.C.C.*, 193 F.Supp. 823, 826 (W.D. Pa.), *aff'd.*, 368 U.S. 6 (1961); *W. J. Dillner Transfer Co.* v. *United States*, 214 F.Supp. 941, 944 (W.D. Pa. 1963). Moreover, in the limited scope of our judicial review of I.C.C. decisions, we defer to the expertise of the Commission and will disturb its orders only if there is no "warrant in the law and the facts for what the Commission has done." *Leonard Express, Inc.* v. *United States*, 298 F.Supp. 556, 559 (W.D. Pa. 1969). *Yourga Trucking, Inc.* v. *United States*, 308 F.Supp. 625, 626-627 (W.D. Pa. 1969). In addition, there exists a special statutory standard by which car service rules must be measured: "The Commission may, after hearing . . . establish reasonable rules,

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Selection Chart is designed to aid in so selecting cars for loading).

c. delivered empty to the home road at any junction subject to Rule 6.

d. delivered empty to the road from which originally received under load, at the junction where received, EXCEPT that when handled in road haul service, cars of direct connection ownership may not be delivered empty to a road which does not have a direct connection with the car owner.

e. returned empty to the delivering road when handled only in switching service.

regulations, and practices with respect to car service by common carriers by railroads subject to this chapter. . . ." 49 U.S.C. § 1(14)(a).

The Commission's report declares that the rules "are not designed to improve the utilization of freight cars, except insofar as return loading is compatible with the primary objective of increasing availability of cars to the owner." 335 I.C.C. at 294. From this flows the necessary conclusion that the "primary objective" of the rules was to increase the availability of freight cars to the car owning line.[4] Under the caption "Conclusions," the report states that

> there is a continuing freight car shortage which requires affirmative, remedial action at this time. We believe that this situation results from a combination of an inadequate ownership of general purpose type freight cars by respondents as a group and improper utilization of the available freight car fleet. . . . Therefore, we will attempt to supply the solution by requiring mandatory observance of the rules.

335 I.C.C. at 308.

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[4] The report continued:

> Thus, improved utilization will be largely in control of the owner who can then provide for the needs of his shippers for whom the equipment was acquired. The greater availability of owned cars rather than haphazard reliance on the supply of foreign cars will provide the owner with an opportunity to measure more accurately its ownership requirements. It will also permit the owner to maintain the car in a condition suitable for use when it is returned. Enforcement of the rules will shift the responsibility for shortages to the railroad with inadequate ownership and compel such a railroad to increase its fleet and to provide better maintenance for its cars.

335 I.C.C. at 294.

To find support for the Commission's action, we turn to what is described as the report's "Findings." We are puzzled that a seven-year study by that Commission, which included a 50-day hearing before an examiner with a record amounting to 6,000 pages, was climaxed by a spartan, one-sentence finding: "Upon further study, we find that respondents as a group [the American railroad industry] lack an adequate freight car supply and fail to furnish adequate freight car service." Paucity of words in an agency's finding does not, of course, render it defective. It does require a reviewing court, however, to subject the report to careful examination in order to decide whether the decision met the appropriate tests. Our examination becomes even more important where, as here, the Commission rejected the detailed report of its examiner with a minimum of explanation. We have previously said:

> The United States Court of Appeals for this circuit has pointed out that as a general rule a Commission's findings should be given much weight in cases in which they have specialized and intimate knowledge of the whole proceedings. However, they point out that a slightly different rule is applicable when a final determination by the Administrative Agency *rejects* the findings of a hearing examiner. It would appear that an examiner's report is not as unassailable as a master and can be reversed by the Commission. The reviewing court while it need not give a trial examiner's findings more weight than they deserve in the light of reason and judicial experience, they should be accorded the relevance that they reasonably command in answering the over-all question whether the evidence supporting the Commission's order is sub-

stantial. See In re United Corporation, 3 Cir., 249 F.2d 168.

W. J. Dillner Transfer Co. v. *I.C.C.*, *supra*, 193 F. Supp. at 827-28. Moreover, in the leading case of *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 493, 496 (1951), setting forth the "substantial evidence" test, the Supreme Court stated:

> [T]he plain language of the statutes [Administrative Procedure Act] directs a reviewing court to determine the substantiality of evidence on the record including the examiner's report.
>
> . . .
>
> We do not require that the examiner's findings be given more weight than in reason and in the light of judicial experience they deserve. The "substantial evidence" standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's. . . .

Although it found a freight car shortage that was "all pervasive" throughout the United States, ostensibly on both owner and non-owner lines, the Commission did not find that the shortage was more acute on the owner lines. Indeed, it is the very hypothesis of the I.C.C.'s conclusion that the shortage extends throughout the industry. The report contained numerous charts and tables relating to car shortages showing a decrease in serviceable cars, a decline of freight car ownership, the incidence of

cars off line, and an increase in turn around time (the time required for a consigned car to be unloaded and reshipped, loaded or unloaded). This may constitute substantial evidence of a general car shortage, but it does not support a specific finding of special car shortages on the owner lines. The requirement that an agency make appropriate findings is not imposed "to insist on formalities and to burden the administrative process with ritualistic requirements," *Yonkers* v. *United States*, 320 U.S. 685, 692 (1944); rather, it rests upon a recognition that

> [t]he courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review. . . . [T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.

SEC v. *Chenery Corp.*, 318 U.S. 80, 94 (1943).

Our concern with the absence of such a finding is similar to that expressed in *Palmer* v. *United States*, 75 F.Supp. 63 (D.D.C. 1947), in which the Court considered significant the absence of findings "that the public interest in the return of cars to the owning railroads outweighs the public interest in prompt movement of freight waiting shipment at the initial unloading point of the car. . . . There is no finding that the present need for cars is on the owning roads rather than on the hiring roads."

In any event, a requirement for the owner railroad "to increase its fleet" will, of necessity, produce substantial effects on the railroad industry and the shipping public. The record, however, is devoid of evidence which reflects the capacity of the railroad

industry to absorb new freight car capital expenditures.[6] The Bureau's main witness, Robinson, testified that he considered the economic impact to be irrelevant to the proceedings. Yet, in the same year that Division Three reversed the trial examiner, the I.C.C. in its Eighty-Third Annual Report, 1969, at 72, concluded that "the general financial condition of railroads may be expected to remain poor, capital expenditures to remain minimal, and reduction in employment extended."

Although we do not consider the financial capability of the railroads to be a controlling factor, we do deem it significant; the ultimate effect of the mandatory rules on both the railroad industry and the shipping public cannot be minimized. It is not beyond reason to contemplate that increased railroad capital expenditures would generate increases in shipping costs. Indeed, a witness for the American Association of Railroads testified that the "confusion, lost motion, delayed shipments, wasted car days, and extra car handling which would ensue, would far more than outweigh any benefits which might be achieved." It is elemental to require that a Commission report and order which may necessitate substantially inereased capital expenditures in the railroad industry be buttressed with evidence disclosing the financial status of the railroads which will be affected.

Absent isolated endorsements, the shipping public

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[6] The Bureau of Enforcement sponsored the mandatory regulation. By brief submitted in the proceedings before the Commission it declared: "It is likely that improvement of car service is going to cost the railroads substantially in investment and expense. The shippers should also be willing to accept the burden of expense which they would also incur."

was generally opposed to the mandatory rules.[6] The intervening National Association of Shippers Advisory Boards introduced evidence that the mandatory rules would: reduce operating efficiency; further burden the shipping public already suffering from shortages of rail equipment; unjustly penalize good faith shippers; work particular hardship on continuous process, fabricating and other industries which utilize inbound cars on outbound shipments; disrupt long-established business practices approved by the Commision built upon the sale of products while in transit; deny to the shipper the right to route his own freight; needlessly increase car handling; and add to transportation costs particularly switching and divert rail traffic to other modes of transportation.

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[6] Because the shippers and the railroads normally are adversaries in Commission proceedings, that they are virtually united in opposing the mandatory rules is a phenomenon not without significance. The concept of mandatory rules originated in and was advocated solely by the Commission's Bureau of Enforcement. It was not recommended by the shipping public or railroad industry as a solution to the complex problem of freight car shortage. Of 116 verified statements, support for the Bureau's recommendation came from an isolated sector of American industry, limited by product and geography:

> [Those supporting the rules] were witnesses Robinson and Ryder of the I.C.C.; Mr. Hilton of the American Plywood Company, I believe it is verified statement 27; Mr. Manning of Western Wood—the correct name of that is Western Wood Products Association, verified statement 28; and Mr. Hackenson and Mr. Singleton, representing the Public Utility Commissioner of Oregon, and that's verified statement 29 and reply verified statement 30, reply verified statement 84; and, finally, Mr. Heights of the United States Department of Agriculture, verified statement 23, reply verified statement 81.

Oral argument of I.C.C. General Counsel.

Witnesses for the National Industrial Traffic League, the largest diversified shippers' organization in the United States, testified that, far from advancing effective car utilization, mandatory enforcement would seriously obstruct and undermine railroad car utilization, and that the necessary consequence would be delay, wasteful railroad operations, and disruption of shippers' production and distribution programs.[7]

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[7] It is impossible to reconcile the divergent appraisal of this same data by the Commission and the examiner. The Commission observed:

> While observance of the rules may require some extra switching and short delays, this small inconvenience and perhaps additional expense is a small price to pay for the overall benefit to be derived when originating lines obtain quick return of their system cars which were acquired to satisfy the needs of local shippers.

335 I.C.C. at 295.

This is to be contrasted with the examiner's evaluation:

> If required by mandatory car service rules to predict routing and destination of individual shipments to be loaded on a specific day the steel companies would be faced with a requirement impossible to meet. In fact it would not be possible to improve the accuracy of forecasting without drastic changes in processing, storage and marketing practices.

Examiner's Report at 26.

> If the plant is among those where a large proportion of cars used for shipments have arrived under load, the necessary increase in switching would exceed the physical capabilities of the plant and the serving carriers beyond the point of rectification.
>
> . . .
>
> [T]he weight of the evidence, and arguments based thereon, compel the conclusion that mandatory rules would be of substantial detriment to rail carriers and shippers.

Id. at 27.

Finally, the Commission concedes that it will be unreasonable and, indeed, impossible, to expect total compliance with the rules. We are told by the examiner:

> If car service rules are established under authority of section 1 (14) (a) of the Interstate Commerce Act they become the rules of the carriers to the same extent as any rate, charge, or other rule which a regulated carrier is required to adopt against its will.
>
> The need for car service rules to be published in tariffs is said to be proven by the exhibits of record submitted by the Bureau of Operations to show bad practices. The witnesses supporting such publication knew that penalties apply when tariffs are not enforced but did not know the magnitude of such penalties. When it is noted that fines under the Elkins Act are not less than $1,000 and range to $20,000, this lack of knowledge indicates a reckless disregard of consequences. Such disdain is remarkable when it is noted that all of the Bureau witnesses agreed that perfect compliance with car service rules is impossible. One of the witnesses was of the opinion that compliance with the first four car service rules proposed would be good if it was made in 80 per cent of the instances those rules were applicable. In view of such opinion the witness believes that the proposed car service rules should be administered with "strictly controlled flexibility". The latter concept may beguile the imagination but it does not provide a comprehensible standard of enforcement. Imposition of the Elkins Act upon respondents for violation of the rules would not

> be a reasonable regulatory action when it is done with the knowledge that as many as 20 per cent non compliance with the rules constitutes good performance.

Examiner's Report at 24.

The admission that there cannot be complete observance of the mandatory rules is a factor which we may consider in determining the reasonableness of a regulation which is self-styled mandatory. The imposition of statutory penalties could be dependent upon a subjective determination of the field representatives of the Commission, thus depriving those charged with an ascertainable standard of guilt. This deprivation could possibly rise to constitutional proportions. See *United States* v. *Cohen Grocery Co.*, 255 U.S. 81, 89-91 (1921), although it is not necessary for us to reach the constitutional question. We consider the concerns about the "ascertainable standard of guilt" solely in the context of the reasonableness of the proposed regulation.

Respecting the expertise of the Commission, and cognizant of the sophisticated, myriad problems facing both the Commission and the railroad industry today, we conclude that the order does not meet the statutory test of reasonableness. Three major deficiencies inhere in the report: (1) a failure to find a specific freight car shortage in the owner-lines; (2) a failure to consider the financial effects upon the [non]owner-lines and the shipping public; and (3) a concession that there cannot be more than 80 per cent enforcement of regulations, the violation of which carries criminal penalties. We do not meet the question of a regulation supported by a record which does not contain a combintaion of these deficiencies.

Accordingly, we grant plaintiffs' motion to annul and set aside the report and order Ex Parte No. 241 of the Interstate Commerce Commission. An order making permanent the previous interlocutory injunction will issue forthwith.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-731

ALLEGHENY LUDLUM STEEL CORPORATION, ET AL.

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

ORDER

For the reasons set forth in the foregoing opinion, it is ORDERED that the interlocutory injunction previously entered be and the same is made permanent and that the defendant Interstate Commerce Commission be and is hereby restrained and enjoined from enforcing or attempting to enforce that part of the orders of the Commission entered August 21, 1969, February 18, 1970, and March 18, 1970, which direct and require respondent railroads to comply, effective July 1, 1970, with Rules 1 and 2 of Appendix G to the report of the Commission, Division 3, dated August 21, 1969, 335 I.C.C. 264.

/s/ Russ Aldisert
United States Circuit Judge

/s/ Rabe F. Marsh
United States District Judge

/s/ John L. Miller
United States District Judge

DATED: March 18, 1971

APPENDIX C

EX PARTE NO. 241

INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES AND PRACTICES

Decided August 21, 1969

1. Upon further study respondents as a group found to lack an adequate freight car supply and fail to furnish adequate freight car service.
2. Certain car service rules prescribed and an ownership formula endorsed, both designed to alleviate a found freight car shortage.
3. Proceeding held open for such further action as may be warranted.

* * * *

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, MURPHY, DEASON, AND HARDIN

MURPHY, *Commissioner*:

Exceptions to the examiner's recommended report and order were filed by the Commission's Bureau of Enforcement hereinafter called the Bureau, and two interveners. Replies were filed by a number of respondents[1] and other interveners. Our conclusions

[1] The respondents are the class I railroads, and a selected group of class II railroads and switching and terminal companies.

differ in part from those recommended. Exceptions and requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

In our prior report, 323 I.C.C. 48, decided June 18, 1964, we concluded that a substantial inadequacy of ownership in more than one category of freight cars existed throughout the United States among all respondents except those operating in the Pocahontas district. Subsequently, on July 29, 1964, we entered an order which broadened this proceeding for the stated purpose of obtaining detailed and precise information on all phases of freight car ownership, utilization, distribution, rules and practices which in any manner contribute to or affect the chronic freight car shortage problem, with the view to consideration of (1) the prescription of rules designed to alleviate the problem, and (2) the issuance of an order or direction under the provisions of section 1(13) of the Interstate Commerce Act.

A special procedure was adopted for the submission and receipt of evidence. As a preliminary, each respondent was ordered to file a verified return of a voluminous questionnaire which was distributed as an attachment to the order requiring its return. A pertinent portion of the questionnaire is reproduced in appendix A hereto. Based on some of the data submitted in response to the questionnaire, a verified statement concerning freight car ownership by respondents was prepared by the Commission's Bureau of Accounts and introduced in evidence by the Bureau; also introduced by the latter party were verified statements prepared by staff members of the Commission's Bureau of Railroad Safety and Service, now part of the Commission's Bureau of Operations. Included in these statements were two formulas de-

signed to determine the adequacy of the freight car fleet and rules and regulations designed to obtain maximum use of the available freight car fleet. At the same time 17 verified statements, one of which is a joint statement on behalf of two carriers, were filed by respondents. The reason why the other 207 respondents did not take advantage of the opportunity to file voluntary statements is not revealed of record or otherwise apparent. Only a few initial presentations were made by the shipping public; these consist of statements from a single shipper and five shipper associations. Additionally, statements were filed on behalf of the American Short Line Railroad Association, the Secretary of Agriculture of the United States and the Public Utility Commissioner of Oregon.

The special procedure rules did not permit cross-examination on the aforesaid verified statements prior to the filing of reply statements. The statements filed by the Bureau resulted in the filing of 47 rebuttal verified statements by respondents and 14 statements by the Asociation of American Railroads, hereinafter called AAR, on behalf of respondents. The opening statements also gave rise to the intervention of 13 additional shippers, seven shipper associations and five port authorities which filed verified statements in rebuttal. In addition, verified statements in rebuttal were filed by eight of the original interveners. These numerous statements, composed without the benefit of cross-examination, contain many duplicative arguments and factual accounts. In general the rebuttal statements present a solid opposition to the formulas, rules and regulations proposed in the opening verified statements.

A hearing was held for the purpose of cross-examination on the initial and rebuttal verified statements,

and briefs were filed thereafter by a number of the parties. Only the Bureau recomenmds adoption or prescription of an ownership formula, regulations and car service rules proposed herein by the Commission's Bureau of Operations.

The examiner in his recommended report found that the record does not contain competent evidence upon which to base a conclusion as to the adequacy of freight car ownership; that the adoption of the proposed car ownership formula, regulations and car service rules has not been shown to be justified; and he recommended discontinuance of the proceeding.

EXCEPTIONS

The Bureau excepts to almost every one of the findings and conclusions of the examiner. Intervener Vulcan Materials Company (Vulcan), excepts to the examiner's (1) failure to find a freight car shortage, (2) failure to find poor utilization of available equipment, and (3) to his recommendation that the proceeding be discontinued. In adition, Vulcan claims that the examiner failed to give any consideration to its proposed car service rules. In regard to the proposed rules, Vulcan abandoned a set of rules presented in its initial verified statement when it substituted a modified set of rules in its rebuttal statement. The latter were not proposed for adoption as written but merely for study. The primary thrust of these rules, as stated by Vulcan is "to make it the responsibility of the originating carrier to furnish a sufficient supply of freight cars for loading and give that carrier control over its cars." The examiner found that the rules proposed for study by Vulcan were self-serving without regard to the rights of other parties to receive notice, and rebut such proposals since they were contained in intervener's rebuttal

statement. Therefore, he held that an account of the Vulcan rules was not warranted as a mater of proper procedure or substance. We agree with the examiner in this respect and will give no further consideration to Vulcan's proposed rules.

The National Industrial Traffic League (League), intervener, also excepts to the examiner's failure to find that a national freight car shortage exists and his failure to adopt and implement four specific recommendations submited by it. The League further excepts to the examiner's refusal to reverse his ruling as to the admissibility of certain evidence introduced in the League's initial verified statement. The four recommendations made by the League are itemized in the examiner's report and those we find to be meritorious are discussed later herein, but all have been given consideration. As for the examiner's ruling as to admissibility of the contested evidence, we agree with the examiner that the statements stricken therein are inadmissible since they are in the nature of hearsay or conclusions based mainly on material that would not lend itself to cross-examination.

The General Motors Corporation, an intervener, filled only a reply to exceptions, but in its reply it renews a motion made during the hearing and renewed on brief to strike evidence submitted by the Bureau on behalf of the Bureau of Operations relative to demurrage charges. The motion was grounded on the argument that the notice of rulemaking issued by the Commission did not intend to reach rules and charges in published demurrage tariffs since no mention was made of the statutory provisions covering demurrage such as sections 6(1) and 15(1) of the act. We find no merit to intervener's renewed motion and affirm the examiner's ruling for the reasons provided in his recomended report. Demurrage charges are very

much a part of the rules and practices relating to the use and movement of railroad freight cars and such rules and practices are covered by our order broadening the subject investigation.

In its reply to exceptions, respondent Southern Railway System (Southern), filed a motion to strike portions of the exceptions filed by the League. The matter objected to involves a quoted portion of our prior interim report wherein general and specific reference was made to reported car shortages. Southern claims that since it had no opportunity to cross-examine the persons making these representations the evidence is hearsay and should not be used to establish the litigation facts in this proceeding. We do not agree that the material is hearsay evidence since it was either obtained from reports filed with the Commission or reflections of our experienced personnel. However, in recognition of the fact that respondents had no opportunity to rebut the findings or statements contained in our interim report, we will not use any of that material as a basis for any ultimate judgment herein.

In their reply to the exceptions, respondents Boston and Maine Corporation and the Trustees of the New York, New Haven and Hartford Railroad Company, acknowledge that they did not except to the examiner's recommended report and order. Nevertheless, they now indirectly attempt to object to certain statements and conclusions of the examiner. Since respondents failed to file any exceptions within the specified period, we will give no further consideration to those objections.

BACKGROUND

In docket No. 29669, *Car Service, Freight Cars*, 268 I.C.C. 687, (1947), the Commission conducted an

investigation for the purpose of determining, among other things, (1) whether the rules, regulations, and practices with respect to the use, control, supply, movement, distribution, exchange, interchange, and return of railroad freight carrying cars are unreasonable, or otherwise unlawful; whether freight cars are being wastefully, uneconomically, or inefficiently used, controlled, supplied, moved, exchanged, interchanged, and returned, and whether such cars are being unfairly or inequitably distributed among shippers, and (2) whether common carriers by railroad have been and are providing themselves with safe and adequate freight cars for performing, as common carriers, their car service. The Commission therein determined that the respondent railroads as a group had failed to furnish adequate car service, to the detriment of the shipping public. However, no rules were prescribed to remedy the inadequate car service since the Commission was led to believe that maximum efficiency in the utilization of freight cars would be accomplished through the wholehearted cooperation by all concerned, shippers and carriers, in the loading, movement and unloading of cars. Moreover, respondent railroads urged that the handling and distribution of freight cars be left to the system of private management which would be compatible with the principle of private operation of the railroad industry. The Commission did order, under the provisions of section 1(13) of the act, that each of the respondent rail carriers file with the Commission its rules and regulations with respect to car service.

The Commission also found an inadequacy in freight car ownership by rail carriers as a group. The Commission recognized, however, that this was caused in part by the inability of railroads to acquire new equipment in the years prior to 1947, because manu-

facturers of cars during World War II were otherwise engaged at the direction of the Federal Government, and, in part, by the postwar boom that resulted in a large increase in manufactured goods which required rail transportation. Therefore, the failure of the railroads to acquire additional cars or to replace worn out equipment was understandable.

It has been 22 years since the last proceeding and little, if any, improvement has been made in freight car service to the public; the railroads simply have not fulfilled the promises or assurances made to the Commission in that proceeding. Car shortages of varying duration and severity have occurred during this period and in nearly every national emergency. They have occurred in almost every year during peak periods of loading and in almost all producing areas of the country. Although freight car shortages may develop with adequate freight car ownership, it is impossible to prevent shortages if, in the first instance, the car ownership and loading capacity of the cars is inadequate. One of the purposes of this investigation is to determine whether the ownership of freight cars by respondents is sufficient to enable them to furnish adequate car service to meet normal as well as peak-loading period demands.

Table No. 1 below is a record of class I freight car ownership, aggregate carrying capacity, and average capacity per car owned for the 10-year period, 1955-1964. These figures were obtained from annual reports submitted by class I railroads to the Commission as required by the act. A decline not only in ownership, but also in aggregate carrying capacity of freight cars is illustrated in this table. A drop of 12.4 percent in total freight car ownership and 5 percent of aggregate carrying capacity is established in the last column, 1964 as compared to 1955.

TABLE NO. 1

Total class I railroad freight car ownership: Aggregate capacity of freight carrying cars (tons) and average capacity per freight car (tons) as of December 31st of each year for the 10-year period—1955-1964

	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	Net change 1964 compared with 1955	
											Cars—tons	Percent
Boxcars—general service:												
Owned	661,154	672,747	666,350	672,400	654,716	627,829	606,267	577,106	545,751	515,123	−146,071	−22.1
Aggregate capacity	32,069,390	32,686,781	32,554,063	32,827,113	32,281,700	31,516,371	30,151,570	28,884,466	27,256,506	26,011,443	−6,057,947	−18.9
Average capacity	48.5	48.7	49.0	49.1	49.3	49.4	49.8	50.0	49.9	50.5	+2.0	
Boxcars—special service:												
Owned	57,756	58,912	58,824	58,865	58,846	58,900	58,836	58,254	71,611	81,220	+23,464	+40.6
Aggregate capacity	2,756,567	2,810,660	2,815,660	2,870,337	2,900,931	2,950,971	2,950,257	2,909,921	3,627,749	4,532,804	+1,781,717	+64.6
Average capacity	47.8	48.6	48.8	48.9	49.3	49.5	49.8	51.3	50.8	55.8	+8.0	
Total boxcars:												
Owned	718,910	727,659	725,174	731,265	707,566	682,729	664,923	635,460	617,362	596,343	−122,567	−17.1
Aggregate capacity	34,825,977	35,496,241	35,369,723	35,697,349	35,182,631	34,176,342	33,102,207	32,044,419	31,084,257	30,544,247	−4,275,730	−12.3
Average capacity	48.4	48.7	49.0	49.1	49.3	49.5	49.8	50.1	51.2	51.8	+3.4	
Covered hopper cars:												
Owned	42,680	46,965	54,167	58,553	61,879	64,356	65,866	66,878	72,216	81,166	+38,486	+90.2
Aggregate capacity	2,920,566	3,232,512	3,766,367	4,061,023	4,257,693	4,450,432	4,607,496	4,690,907	5,277,842	6,016,776	+3,096,210	+106.0
Average capacity	68.4	68.8	69.4	69.3	68.8	69.2	69.9	70.6	73.1	74.1	+5.7	
Gondola cars (total):												
Owned	280,686	277,602	277,650	278,016	270,971	266,860	264,431	249,040	226,736	222,887	−57,699	−20.5
Aggregate capacity	16,656,706	16,740,545	16,825,436	16,969,617	16,686,856	16,444,557	15,906,782	15,580,157	14,790,122	14,078,446	−2,752,260	−16.4
Average capacity	60.0	60.3	60.6	61.1	61.6	61.8	62.0	62.5	62.5	63.2	+3.2	
Hopper cars (open-top):												
Owned	506,449	508,242	521,276	512,466	486,686	480,445	469,149	449,385	431,713	431,791	−74,658	−14.7
Aggregate capacity	30,686,268	30,804,701	30,686,977	30,567,025	29,907,366	29,104,512	28,074,516	26,990,961	25,754,518	27,719,390	−1,966,878	−6.5
Average capacity	60.4	60.6	60.5	60.6	60.0	60.0	60.7	61.5	62.0	64.2	+3.8	
Stock cars:												
Owned	37,923	36,650	35,717	35,727	31,761	30,606	29,627	26,667	24,647	22,446	−15,477	−40.8
Aggregate capacity	1,806,276	1,761,623	1,717,696	1,652,686	1,561,000	1,512,691	1,456,784	1,346,176	1,216,536	990,471	−815,805	−45.2
Average capacity	30.7	30.7	30.7	30.8	30.4	30.4	30.3	30.4	30.6	30.7		
Flat cars:												
Owned	56,174	56,662	54,925	52,666	52,716	52,716	51,881	49,978	49,565	48,257	−7,917	−14.0
Aggregate capacity	3,063,520	3,094,418	3,007,267	2,944,966	2,872,740	2,872,740	2,823,881	2,762,813	2,727,649	2,650,666	−363,851	−11.7
Average capacity	55.5	55.4	55.8	54.9	54.5	55.4	55.6	55.7	55.0	54.5	+1.4	
Refrigerator cars:												
Owned	19,849	20,010	20,210	20,061	20,541	26,007	28,084	29,457	33,365	36,923	+17,074	+86.0
Aggregate capacity	740,000	761,165	787,544	787,567	872,477	1,210,666	1,324,879	1,482,347	1,748,143	2,004,366	+1,264,320	+164.0
Average capacity	38.7	38.0	38.9	39.7	42.5	47.4	47.4	50.3	52.5	54.1	+15.4	
Other freight cars:												
Owned	36,575	36,156	42,644	43,461	44,435	46,672	45,451	46,776	45,861	45,962	+13,167	+35.8
Aggregate capacity	1,810,566	1,807,400	2,106,647	2,206,747	2,281,648	2,424,992	2,276,119	2,455,916	2,496,827	2,727,946	+921,494	+50.8
Average capacity	49.5	50.7	51.6	52.3	52.5	52.8	52.8	52.5	54.5	54.4	+4.9	
Total freight cars:												
Owned	1,666,414	1,706,643	1,748,721	1,724,226	1,679,346	1,668,282	1,604,241	1,550,667	1,512,506	1,468,668	−210,626	−12.4
Aggregate capacity	91,226,266	92,161,028	93,063,669	94,466,434	93,264,609	91,847,166	89,282,926	87,223,696	86,942,901	86,671,766	−4,557,661	−5.0
Average capacity	53.7	54.0	54.5	54.8	55.0	55.4	55.7	56.3	56.5	59.2	+4.5	

Source: Class I railways, annual reports (1955-1964) to Commerce.

In 1955, class I railroads reported to the Commission revenue from freight totaling $8,538,286,192 and in 1964, they reported $8,455,457,209, representing a loss of approximately 1 percent of the 1955 total. Revenue tons originated in 1955 totaled 1,396,000,000 and in 1964, 1,356,000,000, representing a loss of 2.9 percent in tons originated. A decline of 1 percent in earnings and 2.9 percent in tons originated should not result in losses of 12.4 percent in the ownership of freight cars in the national fleet, and 5 percent in the carrying capacity of that fleet as shown in table No. 1.

The greatest decline in any classification of freight carrying cars, both in ownership and aggregate capacity, has been in the plain boxcar classification. Table No. 1 reflects a loss of 22.1 percent in ownership and 18.9 percent in the aggregate capacity in this classification of cars, 1964 as compared to 1955.

Equipped boxcar ownership, although increasing less consistently than the decrease in plain boxcar ownership, has radically increased during the last 3 years in the study period. Thus, the figures in table No. 1 relating to boxcar ownership by car classifications for the years 1955-1964 reflects a change in the type of new equipment purchased by the carriers with an emphasis in more recent years on the purchase of less plain boxcars and more equipped boxcars. Despite the increase in equipped boxcar ownership, a net loss of 17.1 percent in total boxcar ownership and 12.3 percent in the aggregate carrying capacity of total boxcars is reflected in table No. 1.

Open-top hopper car ownership declined 14.7 percent and there was a decline in aggregate capacity of 6.2 percent during the studied period as shown in the last column of table No. 1. The decline in aggregate carrying capacity was offset to some extent by the installation of larger capacity cars during the last 3

of the 10 years studied. Covered hopper car ownership nearly doubled, an increase of 90.5 percent, during the period and the average carrying capacity more than doubled, an increase of 106 percent 1964 over 1955. This classification of equipment, however, is specialized and while it is used quite often in the movement of grain, its substitution for the plain boxcar function in the national fleet is limited.

Gondola car ownership declined by 57,639 cars and 2,752,259 tons of aggregate carrying capacity during the 10-year period, 1964 as compared with 1955. These figures represent a decrease of 20.5 percent in cars and 16.4 percent in tons of aggregate capacity, 1964 compared with the 1955 reported car ownership and capacity.

In order to make any determination as to the adequacy of freight car ownership, it is necessary to have records of serviceable cars, turn-around time, car shortages as reported and car loadings by type of cars loaded. Since this information is furnished for class I railroads only, it was necessary to confine this study to class I railroads. In the Commission's "Form A", annual reports, carriers are required to state ownership and unserviceable cars as of the first and last day of the year only; installation and retirement data are reported annually. Information as to car shortages, car loadings by type of equipment, or turnaround time is not required in "Form A," but this data is gathered by the AAR from weekly and monthly reports submitted by class I carriers (CS-44 reports). Consequently, there is some variation in ownership data due to the fact that carriers file "Form A" reports on December 31 and file reports to the AAR on January 1.

Table No. 2 below, showing freight car ownership, unserviceable freight cars and serviceable freight cars

for the 10-year period, 1956-1965, is compiled from reports made weekly and monthly by class I railroads to the AAR. As shown in the table, class I railroads lost 224,137 cars, or 12.6 percent of their total freight car ownership, 1965 compared to 1956. Their ownership of serviceable cars declined 238,622, or 14 percent of the entire serviceable ownership. Since serviceable cars are the only cars that can be used in transportation, the loss of 14 percent in these cars is of greater concern than the loss in ownership. Total plain boxcars owned by class I railroads decreased 23.4 percent and serviceable plain boxcars decreased 26.1 percent, 1965 compared to 1956. Gondola car ownership decreased 20.2 percent and serviceable gondolas declined 22.5 percent, a loss of 2.3 percent greater in serviceable cars than in ownership. Open-top hopper cars declined 14.1 percent of all such cars owned and 15 percent of serviceable cars during the same period.

On January 1, 1965, class I railroads owned a total of 1,550,477 freight cars. This is 12.6 percent less than the number of cars owned on January 1, 1956. On January 1, 1965, there were 88,856 unserviceable cars which could not be utilized for loading until they were repaired or rebuilt. The remaining 1,461,621 serviceable cars which were ready for use were 14 percent, or 238,622 cars less than the number reported serviceable on January 1, 1956.

TABLE NO. 2

Total class I railroad freight car ownership, unserviceable cars, and serviceable cars, as reported by class I railroads[1] to the Association of American Railroads on January 1, of each year; 10 years 1956-1965, by type of car

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	Net change 1965 compared with 1956	
											Cars	Percent
Boxcars—general service:												
Owned	864,345	874,004	865,276	874,795	865,415	839,200	809,457	778,524	743,696	708,713	-155,632	-18.4
Unserviceable	22,443	25,906	32,216	47,506	47,143	53,853	49,800	48,365	38,625	34,051		
Serviceable	641,906	648,096	653,060	626,944	606,275	585,365	559,568	532,489	506,273	474,622	-167,284	-26.1
Boxcars—special service:												
Owned	52,497	51,473	51,166	47,940	50,220	53,265	54,275	56,941	75,869	87,869	+35,392	+67.4
Unserviceable	2,976	2,522	2,515	2,913	2,920	4,169	3,815	3,430	3,012	2,621		
Serviceable	49,521	48,951	48,651	45,027	47,300	49,196	50,460	53,491	68,877	85,248	+35,747	+72.2
Total boxcars:												
Owned	716,845	725,477	736,442	722,732	706,736	692,364	663,732	637,778	615,567	596,602	-120,243	-16.8
Unserviceable	25,419	28,430	34,731	50,721	50,063	58,004	53,714	49,515	41,637	36,702		
Serviceable	691,426	697,047	701,711	672,011	656,665	634,361	610,045	587,980	574,250	559,900	-131,526	-18.0
Covered hopper cars:												
Owned	41,756	46,210	54,115	56,363	61,607	63,810	65,686	69,108	72,823	81,753	+39,997	+95.8
Unserviceable	556	601	1,055	1,219	1,426	1,576	1,816	1,841	1,523	1,665		
Serviceable	41,199	45,609	53,060	57,144	59,979	62,233	63,870	67,265	72,301	79,768	+38,569	+93.7
Gondola cars (total):												
Owned	288,306	277,430	276,007	275,834	271,826	266,534	256,749	248,625	237,127	223,681	-64,625	-36.2
Unserviceable	16,695	12,993	19,456	32,467	35,799	34,701	33,666	33,026	26,463	17,551		
Serviceable	268,611	264,537	256,519	246,367	243,827	231,833	223,083	215,602	210,664	206,130	-62,481	-23.3
Hopper cars (open-top):												
Owned	505,336	507,819	525,082	516,115	490,820	464,044	465,342	443,764	434,316	434,234	-71,102	-14.1
Unserviceable	29,276	19,150	27,420	54,496	36,664	53,053	42,665	31,927	26,227	26,131		
Serviceable	480,060	488,669	497,672	461,621	454,156	430,991	422,677	411,837	408,089	408,103	-71,957	-15.0
Stock cars:												
Owned	37,693	36,521	35,378	33,609	31,670	30,478	29,148	26,190	24,376	22,125	-15,568	-41.3
Unserviceable	1,755	2,163	1,786	2,051	1,904	1,851	1,532	1,324	1,607	975		
Serviceable	35,738	34,728	33,622	31,558	29,766	28,627	27,616	24,866	22,769	21,150	-14,588	-40.8
Flat cars:												
Owned	48,376	48,924	50,188	49,557	51,267	53,100	54,111	54,125	56,316	65,772	+10,396	+21.5
Unserviceable	1,710	1,845	2,044	2,397	2,436	3,231	3,562	2,620	2,069	2,664		
Serviceable	46,666	46,079	46,074	47,160	48,831	49,869	50,549	51,505	53,847	63,108	+16,442	+26.2
Refrigerator cars:[1]												
Owned	100,661	96,401	95,065	93,129	91,812	91,301	89,453	86,264	90,964	93,408	-6,453	-6.7
Unserviceable	3,017	4,933	6,751	6,748	3,995	4,778	5,114	4,021	3,816	1,263		
Serviceable	96,144	93,466	91,314	87,381	87,814	86,522	84,339	82,243	87,052	91,840	-4,304	-4.4
Other freight cars:												
Owned	44,439	46,794	47,402	46,581	46,274	46,066	44,265	42,452	40,977	39,904	-4,535	-10.2
Unserviceable	1,238	1,354	976	1,115	1,623	1,263	1,720	1,656	1,530	1,405		
Serviceable	43,200	45,440	46,426	45,476	44,651	44,761	42,536	40,784	39,547	38,499	-4,701	-10.9
Total freight cars:[1]												
Owned	1,776,614	1,766,378	1,824,963	1,800,770	1,749,104	1,727,996	1,665,948	1,611,344	1,572,990	1,550,477	-226,137	-12.6
Unserviceable	74,371	71,369	96,223	151,612	126,125	156,610	143,795	127,072	105,471	89,556		
Serviceable	1,700,243	1,715,027	1,730,360	1,649,158	1,624,979	1,569,386	1,524,153	1,484,272	1,467,519	1,461,021	-235,622	-14.0

[1] Includes railroad owned and railroad controlled refrigerator car lines.

Source: Monthly reports of Association of American Railroads, Car Service Division.

Installation and retirements of freight cars by class I railroads during a 1955-1964 study period are shown in table No. 3. Reflected therein is a continuing trend of high retirements in plain boxcars accompanied by a corresponding trend of high installation in equipped boxcars. As noted in column 3 of table No. 3, equipped boxcar installations increased in 1964, in excess of 15,900 cars (including negative retirements) which is greater than the total of all equipped boxcar installations in any of the prior 9 years. Beginning in the year 1962, and continuing through 1964, a high negative retirement figure of equipped boxcars is reported. Negative retirements result from cars purchased secondhand, returned from lessor or cars reclassified. The greater part of these negative retirements are plain boxcars which were reclassified into equipped boxcars by the mere installation of some minor load restraining device.

It is of great significance that total freight car retirements have exceeded total freight car installations during the 10-year period studied. The number of plain boxcars and gondola car retirements was over twice as many as the number of cars installed in each of these classifications throughout this period, 1955-1964.

In only 2 years of the 10-year period did total installations of plain boxcars and gondolas either equal or exceed total retirements. Furthermore, the number of cars retired during the 10 years totals nearly 50 percent of January 1, 1965, total freight car ownership. The total number of plain boxcars, the work horse of the freight car fleet, retired during the 1955-1964 period reflects about 59 percent of the January 1, 1965 ownership; total installations were about 28 percent.

TABLE NO. 3

New freight cars installed and freight cars retired[1]—10 years 1955-1964, class I railroads

		Plain boxcars	Equipped boxcars	Total boxcars	Covered hopper cars	Gondola cars	Hopper cars	Stock cars	Flatcars	Refrigerator cars	Other cars	Total cars
Ownership January 1, 1955		666,238	50,775	717,013	37,654	294,202	537,154	39,055	47,514	99,845	43,475	1,816,752
1955 Installed	1955	20,282	900	21,182	3,447	2,624	3,906	100	1,662	2,938	1,642	37,500
Retired	1955	22,106	2-622	21,284	2-631	15,715	30,611	1,665	1,894	2,533	592	73,491
1956 Installed	1956	29,996	1,704	30,700	4,750	4,967	14,122	300	2,793	2,259	1,740	61,615
Retired	1956	19,340	2,732	22,072	296	7,543	11,541	1,272	1,245	3,989	1,345	49,553
1957 Installed	1957	31,412	1,773	33,185	7,927	10,441	31,272	0	1,692	4,725	3,960	92,590
Retired	1957	20,140	2,060	22,220	22	9,584	13,749	1,142	906	5,088	1,552	54,363
1958 Installed	1958	8,242	693	8,775	4,163	11,215	12,920	200	756	2,184	916	41,172
Retired	1958	15,766	3,719	22,455	2-105	10,371	21,595	2,170	1,329	5,130	1,727	65,006
1959 Installed	1959	13,515	1,593	15,405	3,223	5,710	12,726	0	2,355	2,213	396	42,024
Retired	1959	32,599	2-457	32,402	199	12,835	35,620	1,829	655	6,030	701	93,690
1960 Installed	1960	11,490	2,452	13,942	2,426	7,111	15,452	0	2,739	4,034	123	45,227
Retired	1960	27,704	2-598	27,115	2-77	12,203	26,429	992	596	4,045	333	70,335
1961 Installed	1961	6,471	849	7,320	1,890	2,397	9,441	0	1,621	3,069	170	26,408
Retired	1961	36,554	2-61	36,523	212	12,182	25,143	1,330	810	4,897	1,869	83,856
1962 Installed	1962	8,544	2,901	11,745	3,826	725	9,944	100	1,616	4,016	241	30,232
Retired	1962	37,497	2-1,765	35,732	410	7,569	31,506	3,058	1,602	5,235	2,024	87,436
1963 Installed	1963	6,503	6,039	12,542	4,527	210	5,616	0	3,623	6,257	363	34,488
Retired	1963	41,439	2-7,009	34,430	110	12,701	17,914	1,878	1,432	4,653	2,765	74,822
1964 Installed	1964	9,206	9,810	19,016	8,295	2,010	25,764	302	3,429	6,332	565	65,043
Retired	1964	43,391	2-6,090	37,301	365	15,456	29,046	2,550	973	3,797	1,035	90,556
Installed—10 years 1955-1964		142,401	28,515	171,219	44,576	47,456	150,596	1,002	21,706	35,023	10,410	485,998
Retired—10 years 1955-1964		299,560	2-8,296	291,584	601	117,170	249,435	17,932	10,742	44,565	14,195	745,407
Ownership January 1, 1965		505,713	67,859	596,602	81,753	223,691	434,234	22,126	55,772	93,403	39,804	1,550,477
Net gain or loss in ownership:												
January 1, 1965 versus January 1, 1955		-157,525	+37,114	-120,411	+44,065	-70,521	-102,920	-16,930	-10,956	-6,545	-3,671	-266,275
Percent—gain or loss		-23.6	+73.1	-16.5	+116.9	-24.0	-19.2	-43.3	+22.9	-6.5	-8.1	-14.7

[1]Includes railroad owned and railroad controlled refrigerator car lines.

[2]Negative retirement indicates increase in ownership in excess of new installations, resulting from reclassifications or transfer of equipment, purchase or lease of used equipment, et cetera.

Source: Reports of Association of American Railroads, Car Service Division.

Table No. 4 is a statement of average daily freight car shortages as reported by class I railroads to the AAR throughout the study period, 1955-1964 and averaged yearly for the 10 years. Table No. 5 for the same period represents average daily boxcar shortages by months, by type of boxcar, plain and equipped, and the total of both types. Monthly averages were obtained from weekly reports of average daily shortages as published by the AAR.

In the first 7 years of this 10-year period, shortages of plain boxcars were substantial during the peak shipping months of August, September, and October. This trend is no longer confined to the peak shipping months, but extends throughout the entire year as demonstrated in table No. 5 for the years 1962, 1963, and 1964. A daily average shortage of 100 or more equipped boxcars was reported only five times during the 10 years studied, which would indicate an ownership in that category adequate to meet demands.

TABLE No. 4

Average daily freight car shortages-10 years-1955-1964—Class I Railroads

	Plain boxcars	Equipped boxcars	Total boxcars	Gondola cars	Hopper cars	Covered hopper cars	Flat cars	Refrigerator cars	Total all freight cars
Daily average									
1955									
Fifty-two weeks--	5,252	40	5,293	857	2,201	85	97	5	8,631
Highest week----	12,491	162	12,507	3,360	6,713	268	471	117	22,659
Lowest week----	84	0	84	0	0	0	0	0	84
1956									
Fifty-two weeks--	3,088	13	3,101	1,366	1,953	124	85	10	6,754
Highest week----	7,598	72	7,612	4,422	5,481	324	317	163	18,951
Lowest week----	594	3	601	138	54	0	0	0	1,105
1957									
Fifty-two weeks--	491	5	496	370	520	12	44	0	1,477
Highest week----	1,628	27	1,631	936	2,379	163	149	20	3,273
Lowest week----	0	0	0	0	0	0	0	0	12
1955									
Fifty-two weeks--	976	2	978	14	186	11	1	13	1,235
Highest week----	6,297	50	6,297	173	1,029	129	20	335	7,495
Lowest week----	0	0	0	0	0	0	0	0	5
1959									
Fifty-two weeks--	1,063	2	1,065	158	265	125	67	1	1,726
Highest week----	4,067	20	4,067	578	1,940	420	388	21	5,205
Lowest week----	76	0	145	0	0	0	0	0	145
1960									
Fifty-two weeks--	1,400	1	1,401	38	115	42	18	5	1,637
Highest week----	6,071	15	6,071	162	632	189	103	121	6,617
Lowest week----	111	0	128	0	0	0	0	0	128
196 P									
Fifty-two weeks--	1,136	16	1,152	21	137	61	12	2	1,390
Highest week----	3,887	125	3,963	177	988	195	70	35	5,206
Lowest week----	120	0	120	0	0	0	0	0	120

See note at end of table.

TABLE No. 4

Average daily freight car shortages-10 years-1955-1964—Class I Railro[redacted]tinued

	Plain boxcars	Equipped boxcars	Total boxcars	Gondola cars	Hopper cars	Covered hopper cars	Flat cars	Refrigerator cars	Total all freight cars
Daily average									
1962									
Fifty-two weeks	2,926	18	2,944	58	225	124	80	7	3,451
Highest week	9,240	93	9,271	272	1,120	576	288	50	9,949
Lowest week	285	0	310	0	0	0	0	0	314
1963									
Fifty-two weeks	5,383	18	5,401	223	1,252	255	163	15	7,329
Highest week	14,829	61	14,863	850	3,928	974	638	137	19,178
Lowest week	220	0	220	0	0	0	0	0	225
1964									
Fifty-two weeks	2,822	78	2,900	568	687	203	245	12	4,669
Highest week	8,480	290	8,759	1,158	2,552	612	694	79	12,673
Lowest week	579	11	688	27	0	6	2	0	1,280
Ten years	2,454	19	2,473	367	754	104	81	7	3,830

Source: Weekly reports by class I carriers to Association of American Railroads.

Average daily boxcar shortage: By months, ten years—1955-1964

Class I Railroads

	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Plain boxcars										
January	365	1,540	545	18	207	404	277	1,447	710	2,916
February	547	2,318	1,255	4	620	715	542	4,531	6,730	4,434
March	1,207	3,615	1,116	31	632	917	439	1,927	10,085	1,812
April	1,766	3,781	320	8	704	1,173	491	1,499	6,669	1,149
May	3,852	3,550	129	6	1,259	781	600	1,338	3,832	919
June	6,110	2,651	112	399	1,723	1,129	583	1,061	1,960	1,683
July	10,613	2,921	670	490	1,735	1,621	1,438	1,419	2,095	1,052
August	7,964	2,591	652	1,440	841	1,425	1,539	2,328	2,030	1,002
September	7,334	4,354	421	2,130	1,403	1,172	1,482	4,131	2,564	2,825
October	11,598	6,074	515	5,217	2,436	4,518	3,568	7,885	12,459	7,234
November	8,599	2,348	115	1,839	1,[illegible]	2,492	1,916	7,251	11,823	5,805
December	1,424	1,019	10	348	[illegible]	172	1,248	1,300	2,892	1,945
Equipped boxcars										
January	24	10	2	0	[illegible]	0	0	0	0	30
February	106	16	3	0	[illegible]	1	0	36	14	51
March	127	29	2	0	[illegible]	[illegible]	0	0	30	54
April	66	15	0	0	[illegible]	5	0	0	15	22
May	14	7	5	0	[illegible]	[illegible]	4	0	0	26
June	21	7	6	0	[illegible]	[illegible]	0	0	6	29
July	3	17	10	0	[illegible]	[illegible]	14	0	12	16
August	16	14	1	1	[illegible]	[illegible]	0	0	32	31
September	20	12	2	0	[illegible]	[illegible]	68	28	20	124
October	17	12	0	0	[illegible]	[illegible]	87	55	45	263
November	53	7	12	12	[illegible]	[illegible]	15	24	22	194
December	18	8	13	17	[illegible]	[illegible]	0	15	18	79
Total boxcars										
January	392	1,550	547	18	[illegible]	[illegible]	277	1,447	710	2,946
February	653	2,334	1,258	4	[illegible]	716	542	4,567	6,744	4,485
March	1,334	3,644	1,118	31	837	923	439	1,927	10,115	1,866

See note at end of table.

TABLE No. 5

Average daily boxcar shortage: By months, ten years–1955-1964–Continued

Class I Railroads

	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Total boxcars										
April	1,834	3,796	326	8	707	1,178	491	1,499	6,684	1,171
May	3,866	3,557	134	6	1,262	711	613	1,338	3,832	945
June	6,131	2,658	118	399	1,721	1,129	583	1,061	1,966	1,712
July	10,816	2,938	680	490	1,235	1,621	1,502	1,419	2,107	1,068
August	8,000	2,905	683	1,441	841	1,425	1,389	2,328	2,062	1,033
September	7,354	4,366	423	2,130	1,403	1,172	1,530	4,159	2,584	2,952
October	11,615	6,086	518	5,217	2,436	4,518	3,655	7,940	12,504	7,497
November	8,952	2,355	127	1,851	1,470	2,491	1,934	7,275	11,845	5,999
December	1,442	1,027	23	365	410	172	1,243	1,315	2,910	2,024

Source: Weekly reports by class I carriers to Association of American Railroads.

Table No. 6 is a statement of the national turnaround time for class I railroads on all freight cars, by type, for the 10-year period, 1955-1964. Turnaround time is the elapsed time between loadings. These statistics are published by the AAR monthly, with the yearly average published annually, and this is the only available published record which reflects the utilization of freight cars. The method used to determine turnaround time is as follows: The average number of serviceable cars on line, including private cars, multiplied by the number of days in the period produces car-days. Car-days divided by loading produces turn-around time.

For all types of boxcars, turnaround time increased from 15.78 days in 1955 to 20.08 days in 1964. Paralleling the rise in turnaround time has been the increased number of equipped boxcars placed in assigned service during the 10-year period as shown in table No. 1. The trend of placing more boxcars in assigned service has directly prevented the full utilization of this equipment because the assigned car is generally returned empty to the point of origin; this is one of the factors of assigned service and this increases the national turnaround time.

The turnaround time on covered hoppers increased from 15.7 to 20.75 days, an increase of over 5 days per turn, during the same 10 years. This increase per turn of covered hopper cars reflects the results of placing large numbers of these cars in assigned service.

Turnaround time on gondola cars fluctuates with gondola car requirements. In 1958, gondola car loadings dropped sharply and turnaround time increased correspondingly from 17.18 days in 1957 to 23 days in 1958. Turnaround time on open-top hopper cars remained comparatively static depending on increases

in demand. The close interrelationship between turnaround time on both gondola and open-top hopper cars to the demand for these types of equipment appears consistently throughout the entire 10-year period.

However, turnaround time on flatcars was reduced almost 48 percent during the study period. Tariff requirements placing time restrictions on certain flatcar traffic, using piggyback, trilevel and bilevel automobile flats, accounts for the improvement.

TABLE No. 6

Turnaround time—in days—10 years—1955-1964

Class I Railroads

52 weeks	All box	Covered hoppers	Gondolas	Hoppers	Stock	Flat	Refrigerator	Total all cars
1955	15.78	15.70	16.72	14.15	30.07	22.89	26.54	16.24
1956	16.19	16.63	16.07	14.09	29.12	22.22	28.08	16.37
1957	17.64	18.47	17.18	14.62	36.29	21.27	29.92	17.43
1958	18.95	21.00	23.00	18.50	39.03	22.37	30.79	20.17
1959	16.12	19.53	20.89	17.15	37.03	18.07	30.68	19.00
1960	19.18	20.94	20.99	16.41	40.54	15.59	31.51	19.16
1961	19.76	21.85	22.47	17.13	46.00	15.06	32.33	19.85
1962	19.41	21.46	22.24	16.41	46.34	13.64	30.81	19.24
1963	19.37	20.92	20.46	15.24	52.94	12.87	32.96	18.74
1964	20.08	20.75	19.07	14.48	50.21	11.97	34.39	18.42

Source: Annual reports compiled by Association of American Railroads.

The above statistics gathered from the 10-year study period, and furnished by respondents themselves in their annual reports to the Commission or in CS-44 reports made to the AAR, demonstrate that the class I railroads have failed to maintain an adequate freight car supply sufficient to serve the Nation's shippers. Respondents argue that the decrease in the number of cars, especially plain boxcars, is meaningless because if the railroads can manage to perform their necessary role with a smaller fleet, it would be a mark of economy and efficiency. They contend that advanced types of equipment such as larger and heavier loading boxcars, flatcars for piggyback traffic, rack cars for motor vehicle loadings, covered hoppers for grains and flatcars for the transport of packaged lumber have all but replaced the outmoded and obsolete traditional type of boxcar. We commend the railroad industry for these new innovations in rolling stock and endorse their forward thinking improvements; but statistics show that in spite of these new and improved cars, aggregate carrying capacity declined 5 percent during the 10-year period, 1955-1964, while revenue tons originated declined only 2.9 percent.

Further support for a finding that the available freight car fleet is inadequate is provided for in the data reported for October 1964, in compliance with our order in this proceeding. These reports produced an average daily plain boxcar shortage of 8,251 cars or 17.76 percent of demand, which included average daily shortages reported by short-line and switching and terminal companies in the amount of 162 cars. For all freight cars, the shortages are somewhat less. Application of a formula, designed by the Bureau of Accounts, to the reported data of October 1964,

shows a deficiency of 111,042 cars or 7.66 percent of the total railroads' ownership.

Although the reported shortages for types of cars other than plain boxcars are relatively not as drastic, except perhaps for covered hoppers and flatcars, this fact would not warrant exclusion of any class of cars in any program designed to improve car supply. Testimony and verified statements of numerous witnesses show that there are significant shortages of various other types of cars. The lumber industry experiences shortages of flat-cars as well as boxcars. The steel industry experiences a shortage of 65-foot gondolas and of other types most of the time. Delays of 7 to 10 days on orders for 65-foot gondolas are experienced without shippers being able to meet a single 24-hour production requirement. There was a nationwide shortage of TOFC flatcars in the first quarter of 1966. The grocery industry is faced with a chronic shortage of suitable boxcars. There have been shortages in wheat producing areas and the AAR had to issue a distribution order in the first quarter of 1967 for the return of cars to two of the granger roads. The plywood industry had just enough cars to meet requirements in 1967 after production declined 14 percent under 1966. Witnesses for the coal interests testified that there were severe shortages of open-top hoppers from April to October 1964. In the spring, there are shortages of such types for the movement of aggregates. A witness for the coal industry testified that there had been a shortage of coal cars in 1967 and that during the year mine operators often had to shut down and send their miners home because there were no cars available for loading.

From the evidence adduced and the data collected, it is obvious that an adequate freight car supply is

as much a problem today as it was during the period considered in our last proceeding in 1947. Car service which involves a shortage of approximately 1 out of every 10 cars ordered or even 1 out of every 15 cars ordered demands that every available means be marshalled to eliminate such deficiencies.

Freight Car Utilization

Many of the parties concede that there is a shortage of equipment, but assert that this shortage results from improper utilization or misuse of the available freight car fleet, rather than from inadequate ownership. Indicative of poor utilization of cars is the percentage of ownership of cars on line or the availability of their own car fleets to individual railroads. In its report in *Car Service, Freight Cars, supra,* the Commission took note of the then existing dislocation of boxcars, pointing out that on March 1, 1947, there were but 16.4 percent of boxcars owned located on owners' rails. Since that time the poor percentage of boxcars on line has not been that extreme, but the low levels have been significant. From the spring of 1947 until the end of February 1950, the percentage of cars owned that were on owners' lines increased from 16.3 to 38.5 percent when a serious decline set in. In 1951, the percentage of all boxcars on line reached a low level of 18.8 percent, but thereafter it began to increase again until 1954 when a high of 45.2 percent was reached. Commencing in February 1955, there was again a sustained period of dislocation extending through 1956 when the percentage dipped to 25.6. From 1957 on into October 1964, there was a period of relative stability in the percentage of owned boxcars located on owners' lines differing, however, from other periods of stability in that dislocation grew in intensity

and duration each year during the fall season, and that each year there was slightly less recovery than in the preceding year. In 1965, the maximum percentage of owned plain boxcars on owners' lines reached a high of 36.9 on only two occasions, but remained in the low 30-percent range virtually all of the first 10 months of the year. At year's end the percentage of plain boxcars on line was 29.9, the lowest such level in 9 years; on March 1, 1966, the percentage of plain boxcars on line dipped to 27.7 percent. The above statistics include bad order cars as well as serviceable cars which would even further reduce the availability to owners of cars to load.

The effect of the low percentage of ownership on line is to deprive the originating line of the mix of cars necessary to meet the demands of shippers, for which purpose the cars were acquired. The originating carrier is in the best position to know the requirements of its shippers and is in a far better position than another carrier 1,000 or 2,000 miles away to make judgment as to needs of local shippers. Although similar freight cars may be, and are used for many commodities having quite different loading characteristics, the cars that are purchased by any given line are those which will most nearly fulfill the shipping requirements of its patrons. Thus, railroads which load large quantities of grain will tend to own a large number of boxcars with door openings suitable for grain service. Roads which originate large quantities of lumber will tend to own large fleets of 50-foot boxcars with door opening of 14 or 15 feet. Other variations include car width, height, type of lining and capacity, both cubical and weight carrying.

In addition, railroads tend to maintain their cars to standards required to transport the traffic they

originate. A road originating large quantities of machinery of various types will be concerned with the condition of the floors in its cars, but need not attempt to keep side and end walls in condition to load products in bags. On the other hand, railroads originating large quantities of grain, flour, sugar, paper, and cigarettes must maintain exceptionally high standards of car body condition to provide the cars their patrons must have.

When a car owner receives the use of its own cars on an average of less than once each month, as occurs when less than 40 percent of owned cars are at home, and is required to rely heavily on foreign cars for loading, it is often difficult to find cars of the proper description and condition for the traffic offered even if a number of general purpose type cars are available on line. When in addition, general purpose type cars are also in short supply, the railroad that has purchased an adequate number of cars to satisfy its own shippers very often finds itself with an even more serious shortage than other lines with a deficient ownership of cars.

Under these conditions, there is little incentive for railroad managements to purchase large fleets of cars for general service, or to expend large sums of money in maintaining cars to high standards when, aside from per diem income, often the sole beneficiaries are other lines. Although it is almost impossible to estimate the revenue earning capacities of the ownership, by a single railroad, of common boxcars used in free running service, it is relatively easy to estimate the prospective income that will be derived from the acquisition of cars that will be used in various forms of assigned service. It is understandable why the railroads are now shying away from purchasing or owning general service equip-

ment in favor of cars used in assigned or controlled services. The number of cars in general service, on which the majority of the shipping public heavily relies, is steadily decreasing and causing shortages.

Assignment of Cars

The Bureau introduced reports prepared by field agents of the Bureau of Operations concerning pools of assigned cars at various points and reports involving the handling of controlled cars at specific points. The assignment of freight cars to specific shippers comes about through outright demands made by these shippers or the result of efforts by the carriers to meet the peculiar needs of their patrons. Typical of these needs are: the transportation of certain commodities in bulk, free of contamination by residue of previous loads; to reduce, or eliminate, packaging and blocking requirements by means of load restraining devices permanently or semipermanently affixed to the cars; to provide cars of particularly easy access designed to allow the use of mechanical devices for loading and unloading; or to insure an uninterrupted supply of freight cars of a particular type to the selected shipper. The carriers frequently stencil the body of the assigned car with the notation that when empty the assigned car must be returned to a specific shipper or location.

Controlled cars differ from assigned cars in that they are not assigned to a specific shipper but are kept under close control by the car owner and are not permitted to be loaded in general service by shippers other than those specifically designated by authorized employees of the car owner. Since 1950, rail carriers have acquired a large number of special car types at a considerably higher cost than conven-

tional cars which they have placed in services so controlled as to assure the owners complete control at all times, whether on or off line. Among the car types more commonly handled in this manner are: cars with cushion underframes, cars with interior loading devices to assist in stowing lading, insulated cars, cars of exceptionally high cubic capacity, covered hopper cars, special type flatcars and covered gondola cars. The agent for the owner at origin point usually places a notice on the waybill governing the loading movement stating that when empty the car should be handled in accordance with specific instructions and not placed in general service. The advantages of handling special type cars in controlled service are that the owner gains repeated use of expensive cars that are in demand on its own line and provides a means of securing return loads on cars that, if they were specifically assigned to certain shippers, would normally return empty. With the use of controlled cars, a carrier can offer certain shippers, often off-line, a supply of special type cars in return for maximum hauls and quite often free of demurrage. The practice has now grown to such an extent that some lines maintain large pools of these controlled cars at major terminals from which cars are dispatched empty to secure particularly desired traffic.

In his discussion of Rules 11 and 13 of the Code of Car Service Rules proposed by the Bureau, as shown in appendix B and discussed hereinafter, the examiner analyzed a number of the reports prepared by field agents of the Bureau of Operations relative to car assignments. He found that assigned car pools have become competitively essential to shippers and carriers and that there is nothing inherently unlawful about the assignment of cars. We agree with

some of these findings. Supplying special types of requested cars is a good business practice and necessary if the railroads are to meet regulated and unregulated competition from other modes of transportation, as shown in the record. We endorse this practice since it is in the best interest of the shipping public and the railroads themselves. However, unlike the examiner, we cannot ignore evidence of waste and special privilege resulting from this method of doing business. Instances were shown where carriers held cars for prospective loading from 4 to 80 days or more even though many of these cars belonged to another railroad. Based on a recent study, average turnaround time for cars in assigned service or pools is about 26 days as compared to the national average turnaround time for all cars of 18.42 days in 1964. The latter figure includes assigned and controlled cars which serves to inflate that of the general service fleet. In addition, the indiscriminate use of waiver or reclaim of per diem charges permits the originating line to comply with requests by shippers for additional cars and to pass on to other carriers a substantial portion of the idle car-days accumulated by cars held for prospective loading. Likewise, the failure to assess any demurrage or detention charges on cars held for prospective loading removes from the shipper any necessity of tempering his requests for assigned cars. The field reports show numerous instances where carriers failed to charge demurrage after cars were placed or constructively placed at shipper's plant. Railroads should be compensated by demurrage for car-days lost when a shipper exceeds the free time allowed under the applicable demurrage tariffs. It is only fair that a shipper which secures the exclusive use of equipment under an assignment should compen-

sate the carrier for this special privilege and that this shipper's transportation charges should not be computed on the same basis as that paid by other shippers on the same commodity but without the requested special service. As of October 1, 1964, and as estimated for October 1, 1965, over 70 percent of the equipped boxcars and over 60 percent of the covered hoppers were in assigned service. Since such types of equipment contain the most units of expensive equipment, these assignments represent a substantial dedication of the railroads' resources, and the railroads should be fully compensated for service furnished. This compensation denied to the railroads under present practices could be channeled into the purchase of general service cars which in turn would provide relief for the not so favored shipper.

It is evident that the system of placing cars in an assigned or controlled status has been overdone or oversubscribed. If the railroad industry is to continue this practice, assignments must be reevaluated and made more realistic. Of what purpose is it to assign 17 cars per day to a shipper who loads a maximum of 5 cars daily and an average of 18 cars per week. Other examples of oversubscription are contained in the field agent's reports and adjustments by some carriers and shippers were made only when the matter was brought to their attention. Other carriers, however, declined to realign their assignments, especially when shippers refused to cooperate in any decrease in their assigned pools. Evidence was also presented of instances where special car service orders were issued by the AAR or the Commission to relieve emergency shortages on certain roads which at the time had assigned equipment lying idle for prospective loading. On their returns to the questionnaire accompanying the order in this

proceeding, a group of carriers admitted that they were unable to furnish shippers on their rails with an adequate supply of 40-foot boxcars for their loadings, but at the same time each one of these carriers was willing to place their cars on another carrier's rails to protect traffic originating thereon and to subsidize that carrier by refund of car rental payments. One of the basic tenets of car supply, that is, a carrier should protect traffic originating on its own lines, is apparently being ignored. Such a situation we find to be unconscionable and one that must not be continued.

While some respondents argue that they obtain more use or faster turns out of assigned equipment than general service equipment, this is not the general rule. The few examples furnished by respondents of this fact only demonstrate that in those instances the assignments are realistic. Overall statistics convincingly show a waste of car-days because of indiscriminate assignments which contribute to the ever-present freight car shortage.

Car Service Rules

The efficient use of cars has been of major concern to railroad management and the Commission since the introduction of the principle of free interchange of cars between railroad lines. To cope with this problem, railroad management established a Code of Car Service Rules to be observed by all carriers on a voluntary basis. In 1916, during the height of wartime shortages, there was created a Railroad Commission on Car Service. Three members of that Commission, in a special report, gave the following reasons for its creation:

It is well established that the observance of car service rules with respect to returning equipment

promptly to owners has in the past been to a great extent superseded by use or appropriation of cars by individual lines governed only by expediency. A disregard for the spirit and letter of the rules on the part of a great many railroads has gradually led to an unsatisfactory observance of such rules in so far as they relate to the railroads collectively. This brought about a condition which rendered it impossible for some of the roads that had amply provided themselves with sufficient equipment to perform their obligations to the shippers directly served by them and their duties as carriers to the general public. (42 I.C.C. 702).

This Railroad Commission on Car Service attempted to relocate boxcars, after a study of location statements furnished by the railroads, but on January 11, 1917, it reported its inability to function effectively because certain railroads failed to give it their full cooperation, in spite of prior commitments to do so. Thereafter, in *Car Supply Investigation*, 42 I.C.C. 657 (1917), the Commission ordered the carriers to comply with this set of rules with respect to open-top coal and coke cars and railroad owned or controlled refrigerator cars. The rules then prescribed dealt with provisions as to how cars should be selected for loading or disposed of empty. They were directed principally toward requiring loading of cars back to or toward owner's rails to the fullest practicable extent once they had passed beyond those rails. The Commission's order for mandatory observance of these rules became effective February 21, 1917, but an expiration date of May 1, 1917, was included in the order. After that date, the rules were subject to voluntary observance, reinforced by emergency service orders of the Commision to facilitate an equitable distribution of freight cars throughout the Nation.

These emergency service orders issued under section 1(15) of the act require, among other things, the prompt handling of cars by carriers, return of certain specific ownership to owning lines, that loading of certain cars to specified areas be restricted, that free time on cars awaiting unloading at certain stations be reduced, that penalty charges for detaining cars be imposed, and that restrictions be placed on circuitous routing and light loading of cars. The above measures are all designed to improve utilization of the freight car fleet. While these emergency steps have been helpful, as testified to by a number of shippers and respondents, they are merely temporary and serve to cure the immediate problem only.

In *Car Service, Freight Cars, supra,* the Commission in 1947, as mentioned earlier herein, required the carriers to file their car service rules, but again voluntary compliance was relied on to secure an equitable distribution of freight cars. From the evidence of record it is obvious that voluntary observance of these rules has not been the answer to this most vexing problem. Car shortages still exist. We have given the railroad industry every opportunity to provide a solution and have stood by hopefully waiting for the desired result. It is time that some positive action is taken, and we intend to do so now.

Emergency car service orders have served to provide some relief during critical periods but this, at best, is only a partial solution to the problem before us. Therefore, we will prescribe a number of car service rules under the authority provided in section 1(14)(a) of the act to be observed by all carriers at all times. We have carefully studied the rules and regulations proposed by the Bureau of Operations and the new Code of Car Service Rules prepared by the AAR during the course of this proceed-

ing and adopted by a substantial majority of the AAR membership on October 1, 1967. As mentioned earlier herein, the rules proposed by the Bureau of Operations are shown in appendix B, and its proposed regulations are listed in appendix C. The revised Code of Car Service Rules adopted by the AAR is shown in appendix D.

There is little difference between the rules proposed by the Commission personnel and those adopted by the AAR. In recognition of this, and in the interest of making it as acceptable as possible to the rail carriers, any rules that we will prescribe for mandatory observance will follow the format of those adopted by the railroads themselves through the AAR to be used on a voluntary basis. It is not our purpose to burden respondents with a mass of meaningless regulations or to encumber their operations. We are also mindful of the dangers involved in placing restrictions on the use of cars which may hamper the rail lines in providing the type and number of cars required by their individual shippers and which could lead to a loss of traffic to competing modes. Our purpose herein is to induce the carriers to cooperate more fully among themselves and to provide some relief to the general shipping public which has not been receiving the same car service as a number of favored shippers.

The continuing relocation of cars on owner's lines is of major importance to the maintenance of an adequate car supply. Therefore, we believe that car service rules that provide for the routing of foreign cars to or in the direction of home lines should be prescribed for mandatory observance. Rules 1 and 2 of the AAR Code, as shown below, are designed for that purpose:

CODE OF CAR SERVICE RULES

Rule 1 Foreign cars, empty at a junction with the home road, must be:

(a) Loaded at that junction to or via home rails, or,

(b) Delivered empty at that junction to home road, except in instances where Rule 6 has been invoked, or unless otherwise agreed by roads involved.

Rule 2 Foreign empty cars other than those covered in Rule 1 shall be:

(a) Loaded to or via owner's rails.

(b) Loaded to a destination closer to owner's rails than is the loading station or delivered empty to a short line or switch loading road for such loading. (Car Selection Chart is designed to aid in so selecting cars for loading.)

(c) Delivered empty to the home road at any junction subject to Rule 6.

(d) Delivered empty to the road from which originally received under load, at the junction where received, EXCEPT that when handled in road haul service, cars of direct connection ownership may not be delivered empty to a road which does not have a direct connection with the car owner.

(e) Returned empty to the delivering road when handled only in switching service.

Note.—Boxcars covered by Car Service Division Special Car Order No. 90 should be handled as provided therein.

Notes to car service Rules 1 and 2:

(A) 1. "Junction" as used in these rules means stations where roads interchange cars at a common

point or within switching limits over their own lines, or an intermediate line or lines, or a car ferry or float within such limits. Roads so interchanging cars shall be considered direct connections.

2. This information should be published in THE OFFICIAL RAILWAY EQUIPMENT REGISTER, and when the interchange is other than over their own rails, the channel through which the interchange is effected must be shown.

(B) Inequities resulting from these rules should be resolved by negotiations between the roads involved, and exception to the rules is permitted following such resolvement and concurrence by the Car Service Division.

These two rules are basically the same as those prescribed by the Commission in *Car Supply Investigation, supra*, to be observed for a short period, as noted earlier herein, and identical to rules 2 and 3 of the proposed rules of the Bureau of Operations, as shown in appendix B. They are not designed to improve the utilization of freight cars, except insofar as return loading is compatible with the primary objective of increasing availability of cars to the owner. Thus, improved utilization will be largely in control of the owner who can then provide for the needs of his shippers for whom the equipment was acquired. The greater availability of owned cars rather than haphazard reliance on the supply of foreign cars will provide the owner with an opportunity to measure more accurately its ownership requirements. It will also permit the owner to maintain the car in a condition suitable for use when it is returned. Enforcement of the rules will shift the responsibility for shortages to the railroad with inadequate ownership and compel such a railroad to increase its fleet and to provide better

maintenance for its cars. If a railroad has assurances that it can secure frequent and repeated loadings of its own cars, and if it is prohibited from indiscriminate use or misloading of someone else's cars, it will tend to correct any ownership deficiencies it may have. Moreover, once it is in a position to know what ownership levels it must maintain, it will also be able to justify the investment required. Although mandatory observance of these two rules may create shortages on roads which own insufficient equipment, as argued by certain respondents, the needs of shippers affected should not be met with equipment of carriers which obtained the cars to serve other shippers.

There has been widespread disregard of these two rules since their adoption by the AAR over 50 years ago and especially in recent years. During the month of October 1965, field examinations were conducted by agents of the Bureau of Operations pertaining to the rail carriers' practices in the loading of boxcars towards owners as required. A total of 3,763 cars were checked of which 1,837, or 49.8 percent, were found to be loaded in violation of the two rules. Disregard of the rules by some carriers was more flagrant than others, resulting in violations at certain stations as high as 94 and 90 percent. Many of the respondents do attempt to comply with the regulations in handling foreign cars, but when in times of shortage or emergency the rules are ignored. It is at this time, however, that observance of the rules is most important since a shortage on one line is usually the situation on some other lines. It also appears that some carriers use the rules only as a defense mechanism. The rules are employed as a means of disposing of surplus empty foreign cars and as a means of protection from handling empty cars a line does not want and is not obligated to accept. Although the above are proper

and legitimate use of the rules, they have a more positive purpose. The main purpose is to return to the owner, preferably under load, cars which it has acquired for its own traffic.

Objections to the mandatory observance of these rules were made by a number of respondents which argue that it would increase empty mileage. The objections are based on the circumstances of a foreign car unsuitable for loading because of improper ownership moving back towards the home line for a distance alongside a system car which the rules require the originating carrier to use. This, they contend, will increase empty mileage. Contrary to their argument, empty car miles will be reduced in the long run if cars are used in accordance with the rules.

Some shippers object strenuously to rules 1 and 2 because of the effect of restrictions on their loading operations. While observance of the rules may require some extra switching and short delays, this small inconvenience and perhaps additional expense is a small price to pay for the overall benefit to be derived when originating lines obtain quick return of their system cars which were acquired to satisfy the needs of local shippers.

We see no reason at this time to prescribe rules 3, 4, 5, and 6 of the AAR Code, but do believe they should be followed. Rule 6 provides protection for the carrier delivering loaded traffic to a connection against the possibility of that connection returning empty cars at a junction less favorable to the initial carrier than used originally. We are listing it here for information purposes since it is to be applied in conjunction with prescribed rules 1 and 2.

Rule 6 If a movement of traffic requires return of empty cars to home road via the junction at which cars were delivered in interchange under load, the

home road may demand return of empty cars at such junction, except that cars offered a home road for repairs, in accordance with the Interchange Rules of the Mechanical Division, must be accepted by owners at any junction point.

Note.—Notice of an intent on the part of any road to invoke the provisions of this Rule should be issued by the designated transportation officer to the designated transportation officer of the road to which the notice is addressed, such notice to specify the type of cars and particular junction points involved. Such notice may not limit acceptance to the individual cars previously delivered, but may require the return of an equivalent number of home cars of the type specified, at junction point where delivered loaded.

INTERPRETATIONS

1. The words "Movement of Traffic" in this Rule mean the movement regularly through any junction point of any kind of traffic in (or on) the same class of car.

2. Car Service Rule 6 gives to a railroad which may deliver regularly, to a connection through any junction, traffic of any kind in (or on) its cars of the same class, the right to require connection participating in the handling of traffic from the junction point, to use that point of interchange for the return of the class of empty cars engaged in the service, instead of returning them at some other junction less favorable to the receiving (owning) railroad. (April 25, 1923).

We will require mandatory observance of rule 7, shown below, which establishes the obligation of the delivering and receiving carrier in effecting the interchange of cars and provides the carrier with a uniform definition of the meaning of the term interchange.

Rule 7(A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.

Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data (1) for forwarding and to insure delivery. This responsibility shall continue as respects cars rejected by the car inspector of the receiving road until such cars have been returned to the delivering road. The effect of this paragraph may be altered by special arrangements made between the roads concerned.

(1) *Note.*—The character of the necessary data will be determined by each receiving road in accordance with the conditions of its service.

(B) (1) Each railroad, with due regard for efficient and economical railroad operating practices or conditions beyond the carriers' control, will interchange within 24 hours after arrival or release at interchange station, all cars which it properly may interchange in accordance with the provisions of Section (A) of this rule, subject to the following exceptions (2) to (4) inclusive:

(2) Cars covered by an embargo.

(3) Cars covered by written or telegraphic notice given by the intended receiving line stating that it is unable to receive.

(4) Cars which cannot be placed physically upon the designated interchange track.

(C) When interchange required by Section (B), Paragraph (1) of the rule cannot be accomplished, the provisions of Per Diem Rule 15 will apply.

INTERPRETATIONS

Question.—After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?

Answer.—Yes (June 20, 1924).

Question.—Where a car has been accepted by the inspector of the receiving road, but is not accompanied or preceded by proper data for forwarding and to insure delivery, is the receiving road relieved from responsibility for damage to the car and contents?

Answer.—No, but the rule gives the right to receiving road to refuse to accept in interchange cars which are not accompanied or preceded by proper data for forwarding and to insure delivery, and when such cars are not accepted in interchange they are still in the possession of the delivering road. (June 20, 1924).

(2) When a loaded freight car containing a shipment destined to a non-agency station (a station at which there is no freight agent), billed collect or insufficiently prepaid, is offered in interchange, it shall be accepted from the connecting carrier and forwarded to destination. (January 25, 1926).

(2) *Note.*—Rules of the A.A.R. Accounting Division make provision for the adjustment of freight charges between the originating and the delivering carrier.

We are listing Per Diem Rule 15 herein for information purposes only since it is to be applied in conjunction with prescribed Car Service Rule 7.

Per diem rule 15.—

(a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars

so held for delivery, including the home cars of such connection.

A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.

(b) If such failure to receive shall continue for more than 3 days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.

(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated representative at the point where cars are offered, of the total number of cars so held for it, and within 48 hours from midnight of the day cars are offered furnish the initials and numbers of the cars.

(d) The reclaim accruing under this rule on a car handled in terminal switching service can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.

(e) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the Per Diem on such cars for the following day, subject to local agreement as to time required to make delivery.

(f) This Rule shall apply in connection with loaded cars interchanged between a common carrier by water and a common carrier by railroad except where in conflict with applicable tariffs and divisional agreements.

(g) This Rule shall apply in connection with empty cars interchanged between a common carrier by water and a common carrier by railroad.

INTERPRETATIONS

15(a) *Question.*—In case a car held for a certain road is not delivered to that road, can reclaim be made against such road?

Answer.—No.

15(b) *Question.*—Is it necessary to furnish initials and numbers of cars held which have previously been reported by initials and numbers?

Answer.—No.

15(c) *Question.*—When a road cannot accept cars from a connection, is it necessary for the connection to notify the delinquent line before midnight each day of the total number of cars held for which reclaim is to be made?

Answer.—Yes.

15(d) *Question.*—When a road has invoked the provisions of Car Service Rule 6 and cars are offered to that road at another junction point, is the holding road entitled to reclaim under Per Diem Rule 16?

Answer.—No.

In a series of reports prepared by Commission field agents, instances of delay of cars at terminal and interchange points were shown during August, October, November, and December 1965 and January 1966. Sixteen terminals and interchange points were checked in 10 States, on the lines of nine rail carriers. Of the total of 5,419 loaded cars checked, 1,189 cars or 21.94 percent had been delayed in excess of 24 hours, some in excess of 20 days. Although there is no way of measuring the exact number of movements through terminals and interchange points that are made by

each loaded car, it is reasonable to assume that there is at least one interchange or terminal movement for each car loaded. Applying the 21.94 percent of delay found in the sampling made by Commission agents to the 31,229,884 cars known to be loaded during 1964, it is estimated that 6,851,837 car-days were lost during 1964 because of delays to loaded cars at terminals or in movements from interchange points. The above figure for car-days lost is a very conservative estimate since it is based on only a single day lost for each car whereas the field study showed that most cars are delayed more than a single 24-hour period.

Reference to the Bureau's proposed rule 7, as shown in appendix B and Car Service Rule 7 above demonstrates that they are similar, except for paragraphs (B) (1) where the rule prescribed herein contains the provision that the required interchange be made "with due regard for efficient and economical operating practice or conditions beyond the carriers' control" and (B) (5), dealing with interchanges at which there is no daily train or switching service. The above-quoted provision in rule 7 (B) (1) should not be used as an excuse for carelessness or indifference, but only for conditions which could reasonably be beyond a carrier's control. In view of paragraph (B) (4), and the above-quoted portion of paragraph (B) (1), there appears to be no need for paragraph (B) (5). The change in paragraph (C), and the addition of paragraphs (D) and (E) by the Bureau in lieu of AAR Per Diem Rule 15 do not appear to be worthwhile and would be unnecessarily burdensome to the carriers.

Rules 8 through 14 will not be prescribed since, in general, a required observance thereof will not have any appreciable effect on improved utilization. However, a brief discussion of Car Service Rule 12 is in order. As shown in appendix B hereto, the Bureau's

Recommended Car Service Rule 9 would provide that: Cars containing refuse must not be offered in interchange as empty cars.

Car Service Rule 12, as revised, now provides that:

Cars containing refuse may be rejected by the receiving road when offered in interchange as empty cars.

The Bureau does not advocate mandatory prescription of this Car Service Rule. It is obvious that, as now worded, the rule is permissive and its inclusion as a prescribed rule would still allow discretionary action. Moreover, since respondents are proposing to establish a special charge to be assessed when freight cars are returned as empty but contain various foreign material,[2] it would be inappropriate for us at this time to prescribe rule 12 or a modification thereof, for mandatory application.

Rule 15, in our opinion, is of major importance since the record indicates that one of the prime reasons for undue delays in the utilization of equipment is the lack of adequate information secured by the carrier from the shipper. Car Service Rule 15 is substantially similar to the Bureau's Recommended Car Service Rule 12 except that the latter includes items 6 and 7 which provide for certain restrictions with respect to service by switching carriers. Item 6 would, in appropriate instances, forbid loading of a switching carrier's equipment for movement beyond its own lines. Item 7 would require the road-haul and the switching carriers to observe the Car Service Rules

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[2] I. and S. Docket No. 8363 (Sub-No. 1), *Special Unloading Charge, At Destinations in the United States.* A petition for reconsideration of the Decision and Order of Division 2, dated August 20, 1968, finding such a charge not shown to be just and reasonable was granted by order of July 10, 1969, and the issues are to be orally argued on September 11, 1969.

with respect to car orders. We believe that item 6 is inappropriate since it would deny the switching carrier the right to load its own equipment. This could forestall the incentive for purchases of equipment by such carriers. Since Car Service Rules 1 and 2 are prescribed herein, we see no need for item 7. Respondents admit that rule 15, as revised recently, is necessary to secure adequate information for operating purposes because:

To the extent such information is presently known to the shipper but has not customarily been furnished the carriers' car distributors, it will be provided in the future.

To assist respondents in this endeavor to secure more adequate records, we shall prescribe rule 15 for mandatory application. Rule 15 is set out below.

Rule 15.—(1) Carriers shall record all requests for cars for loading, which shall include the following information if available:

(a) Date and time.
(b) Name of party.
(c) Name of person receiving request.
(d) Kind and size of cars wanted.
(e) Number of cars wanted.
(f) Date wanted (See Note 1 below).
(g) Commodity to be loaded.
(h) Destination and route.

Note 1.—If order covers more than one date it must state number of cars wanted separately for each day.

(2) Request for cars shall be accepted only by the road on which the car is to be loaded.

(3) On cars originating in switching service, the road performing the switching service shall, if cars of suitable ownership under these rules are immedi-

ately available, furnish cars for loading for road-haul via another carrier. If such cars are not immediately available, the switching carrier shall immediately order suitable cars from the designated road-haul carrier in the manner required by paragraph (1). Cars ordered by switching carriers from road-haul carriers for return loading in road-haul service will be furnished by road-haul carriers in the same manner and to the same extent as cars ordered by industries directly served by it.

(4) Switching carriers are obligated to furnish or arrange for cars required for loading to destinations within the same switching limits.

Rule 16, which is of major importance because it governs the assignment of cars to shippers for their exclusive use will also be prescribed.

Rule 16.—(A) When, after the effective date of these rules, specific cars covered by CSD 145 and 435 series are assigned to a shipper for his exclusive use, such assignment shall be made subject to the following conditions:

1. Shipper must request in writing of originating road-haul carrier(s) assignment at least ten (10) days before their intended use of a specific number of cars. If originating carrier(s) agrees to such assignment but desires other road-haul carriers to participate in assignment, it will advise shipper accordingly and will make request on such other carriers.[3]

[3] Subsequent to the service of the recommended report and the filing of exceptions thereto, the following sentence was added: "A road-haul carrier may assign cars but must have the concurrence of the originating carrier which may or may not be a switching carrier." We are not including the quoted portion in our prescribed Car Service Rule 16. However, our findings and conclusions and the order entered herein provide for changes in the rules in appropriate instances.

2. Pools of assigned cars including cars of ownership other than the originating road-haul carriers may be expanded only upon the acceptance by the originating road-haul carriers.

3. When cars are assigned in accordance with this Rule, they shall remain and be treated as assigned cars until the shipper or owning railroad notifies the other and the originating road-haul carrier(s) in writing at least ten (10) days in advance that such assignment is modified or canceled.

(B) Assigned cars shall not be held empty en route to loading point, except as follows:

(a) Upon written instructions of assignee.

(b) When assignee cannot immediately accept on arrival at loading point and cars cannot reasonably be held on other tracks at loading points.

(c) For necessary repairs (not cleaning).

(C) The present and future assignment by a carrier of specific cars for the exclusive use of a shipper at a particular point shall be reported by such carrier to the Operating-Transportation Division of the Association of American Railroads by car initial, number, car type code and specific assignment. Each carrier assigning such cars shall advise the Operating-Transportation Division of the Association of American Railroads of any change in assignment not later than the last working day of the month in which change occurred. The Operating-Transportation Division of the Association of American Railroads will maintain a current record of cars assigned, and distribute such information to car owners assigning cars to a specific shipper at each location, as well as to the roads originating traffic from such assignments, including originating switching line serving the shipper involved. The foregoing provisions of this paragraph

shall not apply when all cars assigned to the exclusive use of a shipper at a particular point are system cars of a single road-haul carrier serving the shipper at such point.

(D) Assigned cars are exempt from Car Service Rules 1 and 2 at initial loading stations.

As discussed and found earlier herein, the practice of assigning cars to specific shippers or placing cars in controlled service has been abused and at the expense of respondents. Under rule 16 the practice will be restricted to a reasonable basis and the records maintained by the AAR will be made available to the Commission. With these records in hand, both the AAR and the Commission will be able to survey the assignments for the purpose of eliminating oversubscription and wasted car-days.

Rule 17 which prohibits the holding of loaded cars at any point between origin and destination, except to make repairs and to provide services specifically authorized by the tariffs, or for other specified causes will also be prescribed.

Rule 17 Loaded cars will not be held at any point between origin and destination, with due regard for efficient railroad operating practices, except as follows:

(a) To perform any service specifically authorized by applicable tariffs.

(b) To make necessary repairs to cars, including adjustment of lading.

(c) To obtain necessary authority for movement of car, or to obtain authority for transfer or rearrangement of lading, when loaded to dimensions or weights in excess of those published in Railway Line Clearances.

(d) When consignee is unable to accept immediately upon arrival and car cannot reasonably be held at destination.

(e) Cars loaded in violation of an embargo.

(f) When normal route of movement is blocked because of accident, high water, damage to track or other disability of this railroad.

This rule, in conjunction with rule 7, should help to eliminate delays occurring at terminals and interchange points. We have already noted the car-days lost because of failure to interchange or deliver cars promptly in our discussion under rule 7. Again, this rule is similar to one proposed by the Bureau (rule 14) except for the qualifying phrase "with due regard for efficient railroad operating practices." Such a qualification should not interfere with the primary purpose of the rule, which is to make clear that intentional delay by the carrier, except as authorized by applicable tariffs, is prohibited.

Rule 18 provides for the use of reasonable diligence in the placing and removal of cars. It also provides that each railroad will, with due regard for efficient railroad operating practices, hold no more cars than are necessary to protect current requirements of shippers served. This rule, as shown below, will also be prescribed and should serve to further improve utilization of the freight car fleet.

Rule 18 1. Each railroad will undertake to:

(A) Placing of Cars:

(1) Use reasonable diligence to place loaded cars promptly following arrival at destination.

(B) Removal of Cars:

(1) Carriers shall use reasonable diligence to promptly remove empty cars from point of unloading

or interchange tracks of industrial plants following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper with approval of carrier for reloading.

(2) Carriers shall use reasonable diligence to:

(a) Promptly remove outbound loaded freight cars from point of loading or interchange tracks of industrial plants following acceptance by carrier of shipping instructions; and

(b) Thereafter promptly forward such cars in line-haul service.

(3) Cars subject to Paragraphs (B) (1) and (B) (2) which are not in fact made accessible to the carrier because of the actions of the consignee or consignor, shall be deemed not to have been released until such cars are in fact made accessible to the carrier.

2. Each railroad will, with due regard for efficient railroad operating practices, hold no more cars for prospective loading at any time for any industry which it serves, than those needed to protect current requirements.

Commission field agents conducted a survey concerning placement of cars for unloading at various destinations throughout the United States. A total of 21,257 cars were surveyed at different times during the period from November 1964 to January 1966. Of that total 1,948 or 9.16 percent were delayed 1 or more days prior to placement for unloading. Applying the 9.16 percent of delay found above to the 31,229,884 cars known to be loaded during 1964 there would be 2,860,057 cars delayed 1 or more days for placement at destination. If each of these cars had been placed 1 day sooner there would have been that many car-days available for transporting freight.

A similar survey concerning removal of loaded and empty cars from tracks serving shippers or receivers at various points was also conducted. There were 17,197 cars checked and delays were noted as to 965 cars or 5.6 percent of those checked. Most delays, according to examples of specific cars, were from 3 to 7 days. Applying this percentage to the 31,229,884 cars loaded during 1964, each of which had to be removed once from tracks serving shipper and once from tracks serving consignee, the loss of usable capacity resulting from failure of carriers to remove cars from tracks serving patrons was 3,503,992 car-days.

In summary, we believe that the Car Service Rules prescribed for mandatory observance will contribute towards a better utilization of the existing national car fleet. Our purpose in prescribing certain of these rules is to facilitate the optimum use of the national car fleet with a minimum of disturbance to respondents' operations. In order to further these endeavors, we shall order the publication in the Federal Register of the prescribed Car Service Rules so as to disseminate this information to interested persons and the general public.

Formula for Determining Adequacy of Freight Car Ownership

Three formulas were presented for computation of car ownership deficiences or excesses, one by the AAR and two by the Bureau of Accounts. All are designed to determine adequacy of ownership by types of car. The two Bureau of Accounts formulas reffect the dichotomy of theories as to car ownership responsibility: responsibility based on loads originated, which has been the predominating ownership concept through the years; and responsibility based

on participation in use of cars measured by days on line. The latter theory was also adopted by the board of directors of the AAR where at a special meeting held on August 26, 1966, they approved an ownership formula to serve as a guide to measure each railroad's responsibility for ownership of general purpose cars. Both the Bureau of Accounts and the AAR directors advocate use of a so-called interline car-day formula which, in addition to providing sufficient ownership to protect a carrier's origination in local service, would insure that each railroad owns cars in numbers equal to its proportionate use of the national fleet in interline service. It is concluded that this type formula is equitable because interline service is a profit venture in which all roads participate to the extent of their proportionate use of the freight car fleet. Since an interline formula will be the most equitable means of establishing car ownership requirements, we shall give no further consideration to the formula designed by the Bureau of Accounts which is based mainly on loads originated and which is shown in appendix D to the examiner's report. The interline formula proposed by the Bureau of Accounts is shown herein in appendix E[4] and the AAR formula in appendix F.

The formulas of both the Bureau of Accounts and the AAR develop car ownership requirements by similar methods, except that the latter provides for credit against interline car-days accumulated by foreign cars loaded and delivered to connections in compliance with car service rules. Essentially, both

[4] Reference in the formulas shown in appendixes E and F to specific sections and items are those so cited in appendix A hereto. References in the formula in appendix E hereto to appendixes C, D, E, and F are to those shown in the questionnaire attached to the order of July 29, 1964.

formulas develop car requirements, except for the car service rule compliance credit, by the following steps: (1) Compute the number of serviceable cars required to protect traffic carried by dividing serviceable car-days of cars on line by the days in the period for which the requirement is to be determined; (2) Compute the number of serviceable cars required to protect shortages by multiplying the reported shortages (reduced by 50 percent in the AAR formula) allocated between local and interline on the basis of car loadings by the computed local turnaround time (serviceable car-days divided by carloads originated in local service) and by the national average turnaround time for interline service; and (3) Adding the computed cars required to protect shortages to the computed cars required to protect traffic carried. Both formulas would require application of data for each type of car for which requirements were to be determined.

We believe that the AAR formula shown in appendix F with its credit provision for Car Service Rule compliance is preferable because it provides added incentive to comply with car service regulations thereby improving utilization of the available freight car fleet. Moreover, it would serve to reduce car owners' requirements by returning cars to owners which would then have them available for loading. In addition, the 50-percent deduction in reported shortages utilized by the AAR in its formula is necessary and warranted. The examiner criticized this figure on the grounds that it was arbitrary, but it was justified on the record to our satisfaction. It is well recognized that many reported shortages are inflated due to overordering by shippers in periods of tight car supply. Orders may be placed with two or more railroads; frequently there is repetitious re-

porting of shortages from day to day. Furthermore, responsible AAR witnesses testified that based upon their experience, over the years, such an adjustment in reported shortages is realistic. We also find some merit to respondents' argument that, in periods of extreme heavy loading, the railroads cannot be expected to fully meet every single request for a car since an ownership which is adequate during peak loading periods would result in idle cars throughout many other periods of each year. Thus, the above-mentioned 50-percent adjustment should compensate for the above circumstances.

The formula is to be directed only to serviceable general purpose cars by type. A general purpose car is any car which under prescribed rules may, after release from load, be used for reloading to any destination in accordance with the Car Service Rules with any commodity for which cars of the same generic type are suitable and are normally used. Such cars will generally consist of plain boxcars, plain gondolas, plain flatcars and open-top hopper cars.

Our purpose in discussing and approving the AAR formula is to provide a guide whereby each railroad can measure its responsibility for ownership of general purpose cars. We have shown and found that there is a shortage of freight cars among respondents as a group, but we have been unable to make such findings as to single carriers. With the aid of the formula, however, carriers individually should be able to determine their deficiencies and to take steps thereafter to acquire the cars needed to protect their requirements. Therefore, we will require respondents to collect data during the month of October of this year and each succeeding year thereafter until further order, for the purpose of applying that data to the approved formula herein and to thereby

determine their car needs. The data to be gathered should be based upon that shown in appendix A herein to the extent necessary for the application of the approved formula in appendix F, but for the appropriate year, in this instance, 1969. Anticipated loadings should be estimated for a similar period in the following year. As mentioned, appendix A is derived from the questionnaire attached to the order issued in this proceeding.

There appears to be some question as to how the credit provision for the use of foreign cars in compliance with the Car Service Rules is to be applied. We believe the procedure is adequately outlined in items 12 through 14(a) of appendix F hereto. The observance checks noted in item 13 of appendix F should be performed by the AAR Car Service Division on a basis of five districts (eastern, southern, northwestern, central western and southwestern), over a set period of time. We believe a period of 4 months would be adequate to obtain this information and should be completed during or shortly after the October data is collected. By June 30, 1970, and each year thereafter until further order, we will expect each carrier to report to the Commission the results of the application of the formula to the data collected in October 1969, and each succeeding year, and the steps taken to cure the deficiencies indicated, or reasons provided why such measures were not taken. The reports to be submitted by June 30 of each year will give respondents and the Commission ample time to review the data before the peak season. Questions regarding application of the formula should be directed to the AAR. The underlying data used in the formula must be filed with the Commission.

We do not contend that the endorsed formula is perfect, or that it cannot be improved upon. It may require revision or refinement based upon experience over a period of time. However, it is the best available and was designed and endorsed by respondents' own organization. According to the AAR, arrangements effective January 1, 1967, were made to collect data necessary for implementation of the formula which should minimize any burden created by our requirement that it be followed.

In our opinion, any meaningful increases in total car ownership can only be realized by application of systematically collected data to the approved formula over a substantial period of time. We do not intend to permit a hiatus of 22 years to again intervene before we reexamine the adequacy of car ownership by respondents.

Respondents and certain interveners contend that any action on our part in this proceeding is foreclosed by the decision in Ex Parte No. 252, *Incentive Per Diem Charges*, 332 I.C.C. 11 (1967). We do not agree. This proceeding was separately instituted for a specific purpose. In Ex Parte No. 252, the Commission, based on recently enacted legislation, examined the need for the imposition of an incentive element, on an interim basis, for the use of freight cars in order to encourage the purchase of freight cars. The application of Car Service Rules and other matters were not in issue, *Incentive Per Diem Charges, supra*, at page 18. Moreover, in this proceeding since we are not prescribing rates such as those considered in Ex Parte No. 252, we do not require the detailed precise data which the Commission found to be necessary but absent in Ex Parte No. 252. As in Ex Parte No. 252, the Commission in this proceeding is concerned with a common prob-

lem: The adequacy of railroad transportation service to meet the needs of the Nation for such service. In our discretion, we have chosen to meet this common problem by a number of methods, including requests for new legislation and by administrative action involving adjudicatory and rulemaking proceedings. We have, for example, used a similar multifaceted approach to the problems concerning *Small Shipments*. Consequently, respondents' and interveners' arguments are misplaced. However, in view of the pendency of Ex Parte No. 252 (Sub-No. 1), it would be inappropriate for us to further discuss the issues raised in Ex Parte No. 252. Accordingly, these contentions of respondents and interveners will be given no further consideration.

CONCLUSIONS

From the evidence adduced and official notice taken of congressional hearings, numerous complaints by shippers to the Commission and various studies made in and outside the Commission, we are convinced that there is a continuing freight car shortage which requires affirmative, remedial action at this time. We believe that this situation results from a combination of an inadequate ownership of general purpose type freight cars by respondents as a group and improper utilization of the available freight car fleet. As mentioned earlier herein, we have given respondents every opportunity to eliminate this problem but they have been unable to bring forth a solution. In our opinion, respondents and certain interveners offer no realistic alternatives for a resolution of the vexing problems of a diminishing national car supply. Reference to respondents' managerial discretion tends to focus on the conclusion that a resolution of the car supply problems will, in

the last analysis, largely depend on affirmative action initiated by this Commission. Therefore, we will attempt to supply this solution by requiring mandatory observance of the rules set forth in appendix G and the filing of reports by respondents individually as to the adequacy of their individual fleet, after application of the approved formula set forth in appendix F, showing what steps, if any, have been taken to cure inadequate car ownership. We have stated and considered numerous criticisms which the proposed rules and formulas have evoked. In recognition of these criticisms and practicability of the rules proposed, we have rejected those shown to be unreasonable or unduly burdensome and adopted only those believed to be necessary and advisable. It is unlikely that all possible infirmities and ramifications could be foreseen, however, the experience of actual use should expose weaknesses and demonstrate the value of the rules prescribed. With this in mind, for the possible need to supplement the rules prescribed, to revise or to refine the formula endorsed, and for the submission of yearly reports in conformity with the previous discussion with respect to the approved formula, we shall hold the proceeding open.

FINDINGS

Upon further study, we find that respondents as a group lack an adequate freight car supply and fail to furnish adequate freight car service. We further find that respondents should be ordered to observe the Car Service Rules prescribed in appendix G herein and to prepare a report, to be filed by June 30, 1970, and each succeeding year thereafter until further order of the Commission, showing the results of the application of data collected during the period October 4-October 31, 1969, inclusive, and for

the entire month of October in each succeeding year, to the approved formula in appendix F herein, and further showing what steps have been taken to cure the inadequacies indicated. In order to facilitate compliance with the prescribed rules, we further find that the prescribed Car Service Rules in appendix G herein should be published in the Federal Register. The proceeding will be held open.

An appropriate order will be entered.

APPENDIX A

Section I—*Revenue cars loaded*

Item (A)—*Revenue or nonrevenue freight loaded in revenue cars for road haul.*—Report all revenue cars loaded with revenue or nonrevenue freight on your line or received from connections in switch service for initial road haul and billing by your line, for each of the five periods requested. These periods are October 1-3, 1964 (3 days) and the four weekly periods ended October 17, October 24, and October 31, and total loadings for the 31 days of October 1964. Report average weekly loadings for the 4 weeks ending October 31. (See item (C) for cars billed by and received from all class II railroads and switching and terminal companies.)

Item (B)—*Loaded for intra-terminal or inter-terminal switch movement.*—(not included in (A)). Report all revenue cars loaded with revenue or nonrevenue freight for intra-terminal (including intra-plant) movement or terminal movement at applicable switching charges (exclude cars delivered to connection for billing), for each period requested: Also total for the month of October and average weekly loadings for the 4 weeks ending October 31. (Report

only loads in cars, either railroad or private owned, which are normally used in interchange service.)

Item (C)—*Loaded on short lines.*—Report all revenue cars loaded with revenue or nonrevenue freight billed by and received from all class II railroads and switching and terminal companies. Also the total for the 31 days of October and average weekly loadings for the 4 weeks ending October 31. List on a separate statement the names of each railroad and switching and terminal company, and the total number of cars received from each of them, for each period requested: Also the total for the 31 days of October 1964.

Item (D)—*Total items (A), (B), and (C).*—Total all cars loaded by periods. Also total for the month of October, and a weekly average for the 4 weeks ending October 31, 1964.

Section II—*Anticipated carloadings*

Same period 1965.—Estimate average weekly carloads, corresponding to section I, item (D), to be originated for the 4 weeks ending October 30, 1965, *based on no car shortage.*

Section III—*Revenue cars*

Item (A)—*Cars reported in section I, item (D) and terminated on line.*—Using the totals for each of the five periods in section I, item (D) report all carloads which originated on your line and terminated on your line: Also total for month of October and the weekly average for the 4 weeks ending October 31, 1964.

Item (B)—Cars reported in section I, item (D) which were delivered to connections.—Using the five period totals reported in section I, item (D), report all carloads which originated on your line and were delivered to connections in interline service: Also

total for the month of October and the weekly average for the 4 weeks ending October 31.

Section IV—*Received from connections.*

Item (A)—*Loads.*—Report total cars received loaded in interline service from class I connections during the month of October, separated (1) *Cars terminating on your line;* (2) *Delivered to connections;* (3) Total loads received from class I connections; and (4) *Weekly average.* (Total loads, divided by 31, multiplied by 7.)

Item (B)—*Empty cars.*—Report total empty cars received from *all* connections during the month of October separated as to (1) *Cars for loading on your line:* (a) Those utilized for loading, (b) Returned as unsuitable; (2) *Bridged to connections;* (3) *Total empty cars received from connections;* and (4) *Weekly average.* (Total empty cars divided by 31 and multiplied by 7.)

Section V—*Empty cars developing on line.*—Report all cars made empty on line during the month of October, separated as to (1) Cars utilized for loading on your line; (2) Delivered to connections; (3) Total empties developing on line; and (4) Weekly average. (Total empty cars divided by 31 and multiplied by 7.)

Section VI—*Serviceable cars on line—Report all serviceable cars on line as of 12:01 a.m. October 1, 1964,* and 12:01 a.m., on November 1, 1964, excluding both heavy and light bad order cars, separated as follows:

(1) On reporting railroad's line;

(2) On short lines to which you furnish cars for loading; and

(3) Total (1) plus (2)

Section VII—*Car supply—serviceable revenue freight cars*

Item (A) *Car shortages—Report actual weekly shortage of serviceable cars for each of the 4 weeks ending October 31, 1964.* The total shortage for each week shall not exceed the number of additional cars which could have been loaded and handled in that week with an adequate car supply. Report for each working day (Monday through Friday) as shortage the aggregate number of cars specifically ordered placed for loading that day in excess of number actually furnished, including cars appropriated by shipper, providing such orders are and have been unfilled for 24 hours or more prior to 6 p.m. of the day for which the record is made. Exclude orders that are *inflated in excess of shipper's known ability to load and ship within 1 working day.*

No shortage exists regardless of number ordered and furnished when shipper fails to load all cars furnished of kind ordered.

At industries jointly served with other railroads no shortage exists regardless of number ordered and furnished when shipper secures the cars required for loading from another serving railroad.

If the shortage occurs in connection with cars ordered from a connection for return loading, report should be made only by the road that places the order; furthermore, no shortage should be reported if the railroad ordering such cars from another road is able to supply them from some other source.

Special types of cars ordered, which are not available, should not be shown as a shortage if other cars suitable for loading the freight are available.

Item (B) *Car surplus*

(1) The total number of empty serviceable revenue freight cars on hand at stations in excess of

orders for loading each day, after deducting number of cars normally required for next day's loading, should be counted as surplus. (In case local operating conditions at specific points require assembling in advance of loading of more than 1 day's supply of empty cars also should be deducted before reporting surplus.)

(2) The aggregate number of such surplus cars of each type on hand for the 5 days, Monday through Friday, divided by 5, for each of the 4 weeks ending October 31, shall be reported as the average daily surplus.

(3) Cars assembled for special or future loading, such as perishables, grain, auto, rough freight, et cetera, shall be included in report as surplus, with note stating the number and for what purpose cars are assembled, using additional page for explanation of unusual conditions.

Section VIII—Freight car ownership—October 1, 1964

Item (A) Total ownership.—Report, by type and mechanical designation requested, the total number of cars owned or leased by you on October 1, 1964, (exclude switching and terminal company ownership cars not normally used in interchange) together with (1) *System cars held for heavy repair*, (2) *System cars held for light repair*, (3) *System cars held for dismantling*, which are included in ownership and in (1). Report the number of (4) *System cars given heavy repair*, 12 months ending September 30, 1964.

Item (B) *Serviceable ownership.* — Report the number of serviceable cars in your ownership on October 1, 1964—Item (A) minus (A)(1) and (A)(2).

Item (C) *System cars in assigned or "Pool" service.*—Report the number of system cars assigned to industries, in assigned "pools" or boarded "Return to" assigned to stations or terminals, by type and mechanical designation requested.

(1) Number of *your* cars assigned to industries or terminals on your line.

(2) Number of *your* cars assigned to industries or terminals on connecting lines; and

(3) Number of *your* cars assigned to industries or terminals on foreign lines with which you do not connect.

Item (D) *Number of cars in "Integral" unit or volume service.*—Report in total the number of cars in such service, separated:

(a) Railroad owned or leased cars; and

(b) Shipper owned or leased cars; in traffic originating on your line.

Section IX—*Installation of cars—12 months ended October 1, 1964*

Item (A) *New cars purchased, leased or built in company shops.*

(1) *Total*

(a) *For assigned or pool service;* (b) *For "integral," volume or unit train service;* and (c) *For regular commercial service.*

Section X—*Cars retired—12 months ended October 1, 1964*

Report all cars retired by your railroad during the 12-month period ending October 1, 1964, separated (A) *For demolition or sale;* (B) *For rebuilding;* (C) *For reclassification;* (D) *Leased to others;* and (E) *Total cars retired.*

Section XI—*Estimated freight car ownership*

Estimate your freight car ownership as of October 1, 1965, separated the same as in section VIII(A); report items requested.

Section XII—*Estimated installation of cars—12 months ended October 1, 1965.*

Estimate the number of freight cars to be installed during the 12-month period ending October 1, 1965, separate the same as in section IX; report items requested.

Section XIII—*Estimated retirements of cars—12 months ended October 1, 1965.*

Report your estimate of the number of cars you will retire during the 12 months ending October 1, 1965, by types and total.

Returns for sections XIV through XVI shall be filed on or before June 1, 1965

CAR-DAYS ON LINE AND CAR-MILES GENERATED ON LINE

The purpose of these sections of the questionnaire is to obtain data on car-days and car-miles involved on each line in handling its traffic during the month of October 1964. Cars which originate in switching service on connecting lines and terminate on the reporting railroad should be considered as local traffic; cars originating on the reporting line in road-haul service for delivery in switching service on a connection should be counted as local traffic. All car-days and car-miles assignable to cars originating in switching service for line-haul movement shall be included in car-days and car-miles reported by the initial road-haul carrier.

All car-days and car-miles assignable to cars terminating in switching service after road haul shall be included in car-days and car-miles by the last road-haul carrier. In determining the allocation of car-days and car-miles between loaded and empty car-days and miles, the following will govern:

Each car handled in switching service shall be checked to ascertain the actual number of days involved in such service. Except in cases where an empty car was delivered at the junction for return loading in switch service or delivered loaded for switch delivery and returned empty, this plan would require obtaining records from the carrier performing the switching service. If a car were received empty by the switching carrier from another carrier at the particular station the record would cover time from date received until delivered loaded to the reporting carrier. If the car were released from loading in the terminal, the empty days would be computed covering time after release from inbound loading. If the car were moved empty in road haul by the carrier performing the switching, days assignable will be computed from the time of arrival at the terminal. Car-days for cars originating in switching service shall be reported by carrier billing the car for road haul and for cars terminating in switching service by the road retaining the billing.

Section XIV—*Car-days on line.*—Compute car-days accruing between October 1 and October 31, 1964, both inclusive.

Item (A)—*Cars loaded and terminated on line:*

(1) Loaded car-days will consist of all days during period cars were loaded or being loaded. Car-days will be computed from the first day of the re-

porting period October 1, 1964. Loaded car-days will be calculated from date of placement of car for loading to date car is released empty at destination as evidenced by the demurrage record.

(2) Empty car-days will be computed from first day of reporting period October 1, 1964 or from subsequent date of receipt from connection or release from prior load until date of placement for loading as evidenced by demurrage record. If, after release from local loading, car is delivered empty to another carrier, the car-days involved will be assigned to the last local move. If cars, after release, are utilized for loading, the empty car-days will be assigned to the next loaded move.

Item (B)—*Cars loaded and delivered to connections:*

(1) Loaded car-days will consist of all car-days during period on which cars were loaded or were being loaded. Loaded car-days will be calculated from date of placement of empty car for loading, as evidenced by demurrage record, until car is delivered to connection.

(2) Empty car-days will be computed from first day of reporting period October 1, 1964, or from subsequent date of receipt from connection or release from prior load until placement of empty car for loading as evidenced by demurrage record.

Item (C)—*Loaded cars received from connections:*

(1) *Terminating on line.*

(a) Loaded car-days will be calculated from date of receipt from connection until release of inbound load at destination as evidenced by demurrage record.

(b) Empty car-days will consist of those days from release of car at destination until delivered empty to

connection. If cars are subsequently loaded on line, empty car-days assignable shall be reported in section XIV, items (A) and (B).

(2) *Delivered to connections*

(a) Loaded car-days will be calculated from date of receipt from connection until date delivered to connection.

Item (D)—*Number of "No Day" cars handled.*—Report the total number of all cars (loaded and empty) received by your line after 12:01 a.m., bridged to connections and interchanged before 11:59 p.m., the same day. Report also estimated average hours per car such cars are on line. (Using separate statement, if needed, explain procedure used in arriving at estimated average hours per car.)

Item (E)—*Car-days on class II lines.*—Report car-days in total (both loaded and empty) on cars delivered to class II lines, which they load or terminate. (List on a separate statement, the names of each railroad and switching and terminal company; and the total number of car-days for the month of October.)

Item (F)—*Car-days—cars in intra-plant or inter-plant switching service:*

Report total car-days (both loaded and empty) for cars used in intra-plant or inter-plant service and where switching service is performed by your line or by the industry. (Report only car-days on cars, either railroad or privately owned, which are normally used in interchange service.)

Item (H)—*Car-days—empty cars received from connections:*

Referring to section IV, item (B), show the total empty car-days separated as to (1) cars for loading

on line (a) those cars utilized for loading; (b) returned as unsuitable for loading; (2) empty cars delivered to dependent short lines; and (3) bridged to connections.

Item (I)—*Car-days—cars awaiting repairs:*

Show total number of cars and days from date carded for repairs until date released for return to revenue service. Report will include all such days accruing during period October 1-October 31, 1964, inclusive, separated:

(1) Car-days held for light repair

(a) Number of cars

(2) Car-days held for heavy repair

(a) Number of cars.

Item (J)—Car-days—surplus cars:

Using surplus cars reported in section VII, item (B) as to surplus cars, estimate the number of car-days for the period October 1-October 31, 1964, inclusive, represented by surplus cars.

Item (K) For the cars reported in section I, item (D), report the number of days from the time they were spotted for loading until released by the shipper.

Item (L) Report the total number of days for which demurrage was incurred by the cars reported in section I, item (D) regardless of the method used for settlement.

Item (M): For the cars reported in section III, item (A) plus section IV, item (A), (1) report the number of days from the time they were spotted for unloading until released by the consignee.

Item (N) Report the total number of days for which demurrage was incurred by the cars reported

in section III, item (A) plus section IV, item (A), (1) regardless of the method used for settlement.

Item (O)—Reclaims paid and received, month of October 1964:

(1) Switching reclaims paid showing (a) total number of cars, and (b) total number of days.

(2) Switching reclaims received showing (a) total number of cars, and (b) total number of days.

(3) Per Diem Rule 22 reclaims paid showing (a) total number of cars and (b) total number of days.

(4) Per Diem Rule 22 reclaims received showing (a) total number of cars, and (b) total number of days.

(5) Rule 6, appendix B, Per Diem Code, reclaims paid (or allowed) showing (a) total number of cars, and (b) total number of days.

(6) Rule 6, appendix B, Per Diem Code, reclaims received (or allowed) showing (a) total number of cars, and (b) total number of days.

(7) Other reclaims paid (not covered by 1, 3, or 5 above) showing (a) total number of cars, and (b) total number of days.

(8) Other reclaims received (not covered by 2, 4, or 6 above) showing (a) total number of cars, and (b) total number of days.

(9) Total reclaims paid (sum of 1, 3, 5, and 7) showing (a) total number of cars, and (b) total number of days.

(10) Total reclaims received (sum of 2, 4, 6, and 8) showing (a) total number of cars, and (b) total number of days.

Note: Indicate briefly on a separate statement an explanation of the reclaims covered by items 7 and 8 above.

Item (P)—*Turnaround time:*

(1) Turnaround time on system cars in assigned service: Report the average turnaround time in days for system cars in assigned or "Pool" service, separated (a) Cars assigned in local traffic; and (b) cars assigned in interline traffic.

(2) Cars in local service: Referring to item (A) this section, (Cars loaded and terminated on line) report the average turnaround time in days based upon a tracing of a sample of the cars.

Section XV—Car-days off line-system cars

Report, in total, the number of days system cars (owned or leased) were off line during the month of October 1964.

Section XVI—*Car-miles generated on line*

Car-miles to be shown in each column are to be computed on the same basis as car-days explained in section XIV.

APPENDIX B

Recommended code of car service rules

(Bureau of Operations, Interstate Commerce Commission)

DEFINITIONS

Home car—A car on the road to which it belongs.

Foreign car—A car on a road to which it does not belong.

Private car—A car having other than railroad ownership.

Home—A location where a car is in the hands of its owner.

Home road—The road which owns a car, or upon which the home of a private car is located.
Home junction—A junction with the home road.

RULE 1

Home cars shall not be used for the movement of traffic beyond the limits of the home road when the use of other suitable cars under these rules is practicable.

RULE 2

Foreign cars, empty at a junction with the home road must be:

(a) Loaded at that junction to or via home rails, or,
(b) Delivered empty at that junction to home road, except in instances where rule 6 has been invoked, or unless otherwise agreed by roads involved.

RULE 3

Foreign empty cars other than those covered in rule 2, shall be:

(a) Loaded to or via owner's rails.
(b) Loaded to a destination closer to owner's rails than is the loading station or delivered empty to a short-line or switch-loading road for such loading.
(c) Delivered empty to the home road at any junction unless subject to rule 6.
(d) Delivered empty to the road from which originally received under load, at the junction where received, EXCEPT that, when handled in road-haul service, cars of direct connection ownership may not be delivered empty to a road which does not have a direct connection with the car owner.

(e) Returned empty to the delivery road when handled only in switching service.

NOTE: Boxcars covered by Association of American Railroads' Special Car Order No. 90, shall be handled as provided therein.

NOTES TO CAR SERVICE RULES 1, 2, AND 3

(A) Car Service rules 1, 2, and 3 do not apply at reconsigning points to cars reconsigned with original lading under duly filed and published tariffs.

(B) 1. "Junction" as used in these rules means stations where roads interchange cars at a common point or within switching limits over their own lines, or an intermediate line or lines, or a car ferry or float within such limits. Roads so interchanging cars shall be considered direct connections.

2. This information shall be published in THE OFFICIAL RAILWAY EQUIPMENT REGISTER, and when the interchange is other than over their own rails, the channel through which the interchange is effected must be shown.

(C) Exceptions to these rules may be authorized by the Car Service Division, Association of American Railroads, subject to approval of the Interstate Commerce Commission. Requests for exceptions must be in writing and must contain a full statement of the need for the exceptions. When approved by the Commission such exceptions shall be published in this tariff.

RULE 4

Acceptance from shipper of cars loaded in violation of rules 2 or 3 herein is prohibited.

RULE 5

Empty cars may be short-routed at a reciprocal rate of eight cents (8¢) per mile plus switching charges, with a minimum of one hundred (100) miles for each road handling the car, the road requesting the service to pay the charges.

NOTE A: The reciprocal rate of eight cents (8¢) per mile named herein shall be in lieu of all other tariff charges for line-haul movements.

NOTE B: The term "switching charges" is defined as charges assessed under applicable tariffs by a railroad which does not perform any line haul in the process of a short-route movement.

NOTE C: The loading or use of a car being handled under rule 5 shall nullify [redacted] application of this rule for all or any portion of [redacted] ment.

RULE 6

If a movement of traffic requires return of empty cars to home road via the junction at which cars were delivered in interchange under load, the home road may demand return of empty cars at such junction, except that cars offered a home road for repairs must be accepted by owners at any junction point.

NOTE TO RULE 6: Notice of an intent on the part of any road to invoke the provisions of this rule should be issued by the designated transportation officer to the designated transportation officer of the road to which the notice is addressed, such notice to specify the type of cars and particular junction points involved.

Such notice may not limit acceptance to the individual cars previously delivered, but may require the return of and equivalent number of home cars of the type specified, at junction point where delivered loaded.

INTERPRETATIONS

1. The words "Movement of Traffic" in Car Service rule 6 means the movement regularly through any junction point of any kind of traffic in (or on) the same class of car.

2. Car Service rule 6 gives to a railroad which may deliver regularly, to a connection through any junction, traffic of any kind in (or on) its cars of the same class, the right to require the connection participating in the handling of traffic from the junction point, to use that point of interchange for the return of the class of empty cars engaged in the service, instead of returning them at some other junction less favorable to the receiving (owning) railroad.

RULE 7

(A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.

Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data (1) for forwarding and to insure delivery. This responsibility shall continue as respects cars rejected by the car inspector of the receiving road until such cars have been returned to the delivering road. The effect of this paragraph may be altered by special arrangements made between the roads concerned.

(1) Note.—The character of the necessary data will be determined by each receiving road in accordance with the conditions of its service.

(B) (1) Each railroad will interchange within 24 hours after arrival, or release at interchange station, all cars which it properly may interchange in accordance with the provisions of section A of this rule, subject to the following exceptions (2) to (5), inclusive:

(2) Cars covered by an embargo.

(3) Cars covered by written or telegraphic notice given by the intended receiving line stating that it is unable to receive.

(4) Cars which cannot be placed physically upon the designated interchange track.

(5) Cars which cannot be interchanged because the delivering line does not have daily train or switching service at the interchange station. All such cars must be delivered or offered for delivery during the next date and hour any train or switching service becomes available.

(C) When interchange required by section B, paragraph (1) of the rule cannot be accomplished, the railroad holding the cars must notify the line unable to receive, the initials, number, consignee and lading of each car held. Such notices must be made in writing or by telegraph, or verbally, confirmed in writing within 24 hours, exclusive of Saturdays, Sundays, and holidays. In addition, when cars cannot be interchanged because of inability to place upon the designated interchange track, a list will be furnished by the offering line to the intended receiving line, showing by initial and number, all cars standing on the interchange track which prevents its use for the interchange of additional cars. The date and hour of attempted interchange must also be shown on this list.

(D) (1) The line withholding cars from interchange must reclaim against the line unable to receive for all per diem, from date offered to date of actual delivery,

earned by each car held because of the conditions described in section B, paragraphs (3) and (4) of this rule. Such reclaims must be accompanied or preceded by the offering report and by the list, when applicable, required by paragraph C of this rule.

(2) The line unable to receive cars withheld from interchange under the provisions of section B, paragraphs (3) and (4) of the rule, will accept and pay, without free time allowance, reclaims prepared under paragraph (1) of the section.

(3) Reclaims prepared under this rule must be presented within 30 days of the month in which the cars held were finally delivered.

(E) On cars held off interchange tracks because of conditions attributable to the consignee, constructive placement notices will be issued and demurrage assessed as follows:

(1) By the line holding cars held subject to section B, paragraph 2 of this rule.

(2) By the line unable to receive cars subject to section B paragraphs (3) or (4) of this rule, when its inability to receive is the direct result of a disability of the consignee which prevents delivery or placement of the cars on the tracks normally used by or for the consignee for purposes of loading, unloading or holding of cars for orders or for inspection.

RULE 8

Each railroad shall become party to Agent H. R. Hinsch's Freight Tariff 4-G, I.C.C. H-17, Car Demurrage Rules and Charges—Storage Rules and Charges, or successive issues thereof. Except as otherwise provided herein, Freight Tariff 4-G shall contain all rules, regulations and charges governing the detention of cars or the storage of freight on railroad property, by

or on behalf of shippers and receivers. Other tariffs of demurrage and storage rules, regulations and charges may be published for application to specific traffic, provided an item of exception naming such tariffs is published in Freight Tariff 4-G.

RULE 9

Cars containing refuse must not be offered in interchange as empty cars.

RULE 10

(A) Boxcars classed as suitable for grain loading or better, or refrigerator cars, must not be loaded with any of the contaminating commodities listed below. If so loaded and it becomes necessary to renew floors, lining, or sheathing (including associated parts), or portions thereof, in order to restore car to previous loading classification because of contamination due to such loading, the cost of the repairs shall be assumed by the road (either switching or road-haul) responsible for furnishing the car for such loading.

1. Animal products:

(a) Hides, Pelts, or Skins.
(b) Glue Stock.
(c) Manure, or Fertilizing Compounds with Contaminating Odor.
(d) Meat Refuse, Offal, Tankage, or Waste from Slaughtered Animals.
(e) Bones, or Horns with Contaminating Odor.
(f) Dried blood.
(g) Tallow.

2. Copra.
3. Fish Scrap or Fish Meal.

4. Shell Fish in Bulk.

5. Shells (clam, mussel, or oyster) in raw state with contaminating odor.

6. Asphalt (asphaltum) Natural, or Asphalt Compounds, byproduct or petroleum.

7. Creosote, or Creosoted Materials.

8. Lamp Black, Carbon Black (all types), Graphite (Black Lead), or Plumbago.

9. Poisonous Chemicals or Compounds in containers or bulk.

(B) The following commodities must not be loaded in foreign boxcars classed as suitable for grain loading or better, or refrigerator cars, except that such cars of any road participating in the haul may be used when such usage is authorized by the owner.

1. Battery parts such as cylinders, frames or plates, burned out of scrap.

2. Charcoal, in bulk or cloth bags.

3. Coal, coke, lignite or briquettes.

4. Containers, empty, such as barrels, cans, drums or pails when previous use was for acids, asphalt, chemicals, creosote, grease, oils, tar, tankage and similar contaminating commodities, unless properly cleaned inside and outside to prevent contamination.

5. Cotton or other seeds, hulls, fibre or shavings, when oily dyed, in bulk or in containers which would result in contamination.

6. Glass, crushed, ground or powdered, in containers or in bulk.

7. Graphite in containers, which would result in contamination.

8. Greasy or oily products in bulk or in containers which would result in contamination, such as:

(a) Metal borings and turnings.

(b) Bearings.

(c) Chains.
(d) Electrical apparatus.
(e) Iron or steel bars, plates or shapes.
(f) Machine parts.
(g) Machinery.
(h) Pipe and pipe fittings.
(i) Scrap.
(j) Tin plate (oiled).
(k) Vehicle parts, including farm implements and tractors.

9. Insecticides, fungicides, insect repellents, vermin exterminators, poisonous, in containers or bulk.
10. Peat, or peat moss in bulk.
11. Tar and tar products in barrels, and tar refuse.
12. Acids.
13. Grease.
14. Molasses.
15. Oils.
16. Petroleum or petroleum products, including compounded oils or greases having petroleum base.

RULE 11

Waiver or reclaim of per diem, mileage or other car rental charges for empty cars en route to, or held en route to, or held empty at points of loading is prohibited.

RULE 12

Item 1: Requests for cars for loading, instructions for release of cars held for orders, including orders for actual placement, and instructions for holding of cars shall be in writing, or confirmed in writing within 24 hours, such confirmation to include actual date and time orders or instructions were given, name of

party requesting the service and name of party accepting the request on behalf of the road.

Item 2: Orders for equipment for loading must be specific and must state:

a. Kind and size of cars wanted.
b. Number of cars wanted.
c. Date wanted (See Note 1 below).
d. Commodity to be loaded.
e. Destination and routes.

Note 1: If order covers more than one date it must state number of cars wanted separately for each day.

Item 3: Shippers must place orders for equipment desired for loading with the road on which the cars are to be loaded.

Item 4: On cars originating in switching service, the road performing the switching service shall, if cars of suitable ownership under these rules are immediately available, furnish cars for loading for road-haul via another carrier. If such cars are not immediately available, the switching carrier shall immediately order suitable cars from the designated road-haul carrier in the manner required by paragraph 2. Cars ordered by switching carriers from road-haul carriers for return carrier loading road-haul service will be furnished by road-haul carriers in the same manner and to the same extent as cars ordered by industries directly served by it.

Item 5: Switching carriers are obligated to furnish or arrange for cars required for loading to destinations within the same switching limits.

Item 6: A switching carrier must not load its own equipment in switch service for road-haul by other carriers when suitable equipment, under these rules, is immediately available on its line or can be furnished promptly by road-haul carrier.

Item 7: Road-haul carriers, in furnishing cars on order placed by switching lines, are responsible for observing Car Service rules. Switching carriers must so apply cars received on empty car orders as to insure compliance with Car Service rules.

RULE 13

Specific cars may be assigned to shippers, for their exclusive use, subject to the following conditions:

a. Shipper must request assignment of a specific number of cars in writing at least 10 days before their intended use.

b. Assigned cars will be subject to demurrage rules applicable to cars held for loading from date of actual or constructive placement until released. If released without loading, demurrage rules applicable to cars ordered, furnished, and not used will apply.

c. Assigned cars held empty en route to loading points, on instructions of assignee, will be subject to demurrage rules applicable to cars held for orders.

d. Assigned cars are exempt from Car Service rule 1, 2, and 3.

e. Assigned cars shall not be held empty en route to loading point except as follows:

1. Upon written instruction of assignee.

2. When assignee cannot immediately accept on arrival at loading point and cars cannot reasonably be held on other tracks at loading points.

3. For necessary repairs (Not cleaning).

f. Within 24 hours of arrival at loading, or at hold points as described in items (e) (1) and (e) (2) of this rule, exclusive of days exempted from demurrage in applicable demurrage tariffs, carriers will place or constructively place empty assigned cars, or

issue notice of arrival on assigned empty cars held en route for orders.

RULE 14

Loaded cars will not be held at any point between origin and destination except as follows:

a. To perform any service specifically authorized by applicable tariffs.

b. To make necessary repairs to cars, including adjustment of lading.

c. To obtain necessary authority for movement of car, or to obtain authority for transfer or rearrangement of lading, when loaded to dimensions or weights in excess of those published in Railway Line Clearances.

d. When consignee is unable to accept immediately upon arrival and cannot reasonably be held at destination. (See Note.)

e. Cars loaded in violation of an embargo. (See Note.)

f. When normal route of movement is blocked because of accident, high water, damage to track or other disability of this railroad.

NOTE: When cars are held under Items (d) or (e) of Car Service rule 14, notice will be given within 24 hours, in the manner prescribed in applicable demurrage tariffs.

RULE 15

The acceptance of instructions requiring the movement of freight via specific internal routes of a single railroad is prohibited except where necessary to accomplish services specifically authorized by applicable tariffs. When such services are instructed by shipper or consignee the originally applicable tariff charges must be assessed regardless of subsequent cancellation.

RULE 16

Item I. Each railroad will undertake to:

(1) *Placing of cars.* — (i) Loaded cars, which after placement will be subject to demurrage rules applicable to detention of cars awaiting unloading, shall be actually placed within 24 hours, exclusive of Sundays and holidays, following arrival at destination.

(ii) Actual placement means placing of a car on industrial interchange tracks or other-than-public delivery tracks serving the consignee, or on public delivery tracks. Proper notice for cars placed on public delivery tracks shall be sent or given within 24 hours after placement, exclusive of Saturdays, Sundays, and holidays.

(iii) When delivery of a car, either empty or loaded consigned or ordered to an industrial interchange track or to other than a public delivery track cannot be made because of any condition attributable to the consignor or consignee, such car will be held at destination or, if it cannot reasonably be accommodated there, at an available hold point, and constructive placement notice shall be sent or given the consignor or consignee within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at destination or hold point.

(iv) Loaded cars held at destination for accessorial terminal services described in the applicable tariffs, such as holding for orders or inspection, shall be placed on unloading, hold or inspection tracks, and proper notice given within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival at destination. On cars set off and held short of billed destination, or on cars held at destination and short of inspection tracks, a written notice shall be sent

or given to consignee or other party entitled to receive such notice, within 24 hours of arrival, exclusive of Saturdays, Sundays, and holidays, at the hold point. Time and charges shall be computed from the first 7 a.m., following such notice and demurrage assessed in accordance with provisions of applicable tariffs.

(2) *Removal of cars.*—(1) Empty cars must be removed from point of unloading or interchange tracks of industrial plants within 24 hours, exclusive of Sundays and holidays, following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper with approval of carrier for reloading within such 24-hour period. Empty cars not ordered for loading at point where made empty must be forwarded in line-haul service within 24 hours, following removal of empty cars.

(ii) Outbound loaded freight cars must be removed from point of loading or interchange tracks of industrial plants within 24 hours, exclusive of Sundays and holidays, following acceptance by carrier of the shipping instructions covering the cars. Such cars must be forwarded in line-haul service within 24 hours, following release and removal.

(iii) Cars subject to paragraphs (2) (i) and (2) (ii) not made accessible to the carrier shall be subject to demurrage until such time as they become, and remain, accessible to the carrier.

(3) *Forwarding of cars.*—(i) Loaded and empty cars of foreign or private ownership, and empty system freight cars when the holding line is the beneficiary of Car Distribution Directions or Orders issued by the Interstate Commerce Commission applicable to the kind of car held, shall not be held in excess of 24 hours for any purpose, except as follows:

(ii) Loaded cars held subject to instructions of consignee, consignor, or other qualified owner of the freight contained therein.

(iii) Cars held for repairs.

(iv) Cars held because daily train or switch engine service is not available. (See paragraph 6.)

(4) *Cars held for repairs.*—(i) Loaded cars and empty cars of foreign or private ownership, and empty system cars when the holding line is the beneficiary of Car Distribution Directions or Orders issued by the Interstate Commerce Commission applicable to the kind of car held, which are held for light repairs shall be placed on repair tracks not later than the first 7 a.m. exclusive of Sundays and holidays after time carded for repairs. Light repairs shall be made on same calendar day, exclusive of Sundays and holidays, that cars are placed on repair tracks; except that when necessary to order from car owner the material necessary to make light repairs to foreign or private cars, light repairs to foreign or private cars held awaiting such material shall be completed prior to 11:59 p.m., of the calendar day which includes the first 7 a.m., inclusive of Sundays and holidays, after receipt of such material at the station at which the repair point is located.

(ii) Light repairs are defined as repairs requiring less than 20 man-hours by repair track forces to complete.

(5) *Railroad operating regulations for the movements of freight cars.*—(i) No common carrier by railroad subject to the Interstate Commerce Act shall delay the movement of cars by holding such cars in yards, terminals, or sidings for the purpose of increasing the time in transit of such loaded cars.

(ii) Cars shall not be set out between terminals except in cases of emergencies or sound operating practices.

(iii) Backhauling cars for the purpose of increasing the time in transit is prohibited.

(iv) Through cars shall not be handled on local or way freight trains for the purpose of increasing the time in transit of such cars.

(v) The use by any common carrier by railroad for the movement of cars over its line, of any route other than its usual and customary fast freight route from point of receipt of the car from consignor, or connecting line, to point of delivery to consignee, or to next connecting line, except for the purpose of according a lawfully established transit privilege (not including a diversion or reconsignment privilege) is hereby prohibited.

(6) *Availability of service.*—(i) The availability for movement of forty (40) or more cars, whether loaded or empty, in territory normally served by a single train or engine, shall be considered sufficient to justify the train or engine service required to place, remove, or forward all such cars on any given day. Where side-trip operations are necessary, the availability of 10 such cars for each 25 miles of round-trip service required to move such cars will be considered sufficient to warrant the side-trip.

(ii) When the volume of available traffic is less than that described in paragraph (i) of this section, placement, removal, or forwarding of all cars which are available 1 hour or more prior to departure of a train or engine serving the station or terminal where such cars are held, by that train shall be deemed compliance with item I, sections (1), (2), or (3) of this rule. Nothing in this paragraph shall be interpreted as to require the movement of a car in a direction opposite to its proper direction of movement, unless such backhaul will expedite the overall movement of the car to its proper destination.

(7) *Application.*—Holidays shall be those listed in item 25 of Agent H. R. Hinsch's tariff ICC H-17, naming Car Demurrage Rules and Charges, supplements thereto or successive issues thereof.

Item H. (a) Each railroad will, with due regard for efficient railroad operating practices, hold no more cars for prospective loading at any time for any industry which it serves than those needed to protect current outbound loading, and where one or more other railroads also serve an industry each railroad will arrange to prevent the aggregate holding of empty cars in excess of the industry's current needs.

(b) The holding of empty foreign cars for prospective loading in excess of 24 hours, exclusive of Saturdays, Sundays, and holidays is prohibited. (See Exception.)

EXCEPTION: Cars assembled for peak or seasonal movements and special types of cars for specific types of loading provided advance authority is received in writing from the Car Service Division, Association of American Railroads and subject to approval of the Interstate Commerce Commission.

APPENDIX C

Regulatory proposals

(Bureau of Operations, Interstate Commerce Commission)

PROPOSAL I

The proposed rules shall be applicable to all common carriers by railroad subject to the Interstate Commerce Act, regardless of classification, and shall apply to intrastate, interstate, and foreign commerce.

PROPOSAL II

A Code of Car Service Rules to be filed in tariff form to which all carriers described above shall be parties. Additional rules presently published by the Association of American Railroads in its Code of Car Service Rules may be incorporated in these rules or may be separately published, at the option of the carriers. Proposed Car Service Rules 5, 6, 9, and 10 appear in the existing AAR Code of Car Service Rules. Their continuance should be optional with the carriers. However, if these rules are continued, they should be enforceable and have uniform application to all railroads, hence their inclusion in the proposed Car Service Rules. The suggested rules are printed as appendix F herein.

PROPOSAL III

Carriers will maintain at open stations and at yards and terminals daily records, on forms approved by the Interstate Commerce Commission, of cars on hand, cars ordered for loading, cars furnished for loading, cars received and dispatched and of cars held for repairs.

PROPOSAL IV

Carriers will maintain at open stations, on forms approved by the Interstate Commerce Commission, records of cars held by or for patrons, on which demurrage, track storage and other charges provided in demurrage tariffs are based.

PROPOSAL V

All rules, regulations and charges governing the holding of cars or storage of freight on railroad property by or on behalf of shippers, including track

storage charges, shall be published in separate tariffs relating exclusively to such rules, regulations, and charges.

PROPOSAL VI—DEMURRAGE RULES

1. The demurrage rates named in Agent H. R. Hinsch's Tariff 4-G, I.C.C. H-17, supplements thereto, or successive issues thereof shall be the minimum demurrage rates published in any tariff.

2. Nothing in these regulations shall prohibit the publication of higher demurrage rates if such rates are deemed necessary to encourage the prompt release of freight cars.

3. All demurrage rates and charges shall be based on the detention of cars. Demurrage rates and charges presently expressed in monetary units per unit of weight, per bushel, et cetera, shall be canceled and replaced with rates and charges based on the detention of cars for stated periods of time.

4. Except as to traffic presently governed by Agent H. R. Hinsch's Tariff 8-M, I.C.C. No. H-13, supplements thereto or successive issues thereof, no demurrage tariff shall permit the holding of cars free of demurrage for periods in excess of 5 days, exclusive of Saturdays, Sundays, and designated holidays.

5. Nothing in these regulations shall be deemed to require the granting of 5 days' time free of demurrage nor to require the exemption of Saturdays, Sundays, and holidays from demurrage charges.

6. All demurrage tariffs, except Agent H. R. Hinsch's Tariff 8-M, I.C.C. H-13, shall provide for arbitrary demurrage charges after the time periods and at rates equal to or greater than the rates specified in agent H. R. Hinsch's Tariff 4-G, I.C.C. No. H-17.

7. Section C, rule 4, item 255 of Agent H. R. Hinsch's Tariff 8-M shall be amended to terminate free time period after 30 days, Saturdays, Sundays, and holidays included, and to establish arbitrary demurrage rates equal to the highest rate applicable to cars of the same mechanical designation, published in Agent H. R. Hinsch's Freight Tariff 4-G.

8. Except as provided in paragraphs A, B, and C below, Agent H. R. Hinsch's Freight Tariff 4 Series will govern the assessment of all demurrage charges:

A. All other tariffs establishing demurrage rules, regulations and charges will be described in an item or list of exceptions published in Agent H. R. Hinsch's Freight Tariff 4 Series.

B. Other demurrage tariffs may be issued naming greater or lesser periods of free time, or higher rates of demurrage charges than those named in H. R. Hinsch's Tariff 4 Series. When such other demurrage tariffs are issued they will also contain appropriate revisions of Average Agreement Rules. In all other respects the provision of Agent H. R. Hinsch's 4-Series tariff will govern.

C. The present tariff governing coal at the mines, H. R. Hinsch's Tariff 8 Series, may be continued subject to the provisions described in preceding paragraphs.

9. Demurrage at ports shall be subject to the following:

A. Demurrage rules, regulations and charges shall be uniformly applicable at ocean, lake, and river ports and shall apply to both export and domestic traffic, including intercoastal traffic.

B. A maximum of 48 hours free time may be allowed on cars originating in inter- or intraterminal

services at the port where held and destined to vessels, piers, or storage yard for unloading. Such free time shall be computed without notice from the first 7 a.m., after loading is completed and switching instructions are given, less time required for movement. Saturdays, Sundays, and holidays may be excluded in computing free time to the extent authorized by applicable tariffs.

C. When cars are held away from ports because of congestion at ports, or on instructions of consignee, consignor or owner of the freight, or are held for inspection, export papers, or any other services, either en route or at the ports, the free time allowed for such purposes will be included in the free time period allowed under applicable port demurrage tariffs.

D. In computing demurrage on cars subject to port demurrage tariffs, cars to be unloaded by the railroad under applicable tariffs, shall be released as of date and time the vessel named to transport the freight from the port arrives and is available for loading, or when instructions to unload and place in pier, shed, or ground storage, subject to applicable tariff charges, are received by the railroad, whichever occurs first.

E. When cars are unloaded by any other party they shall not be released until all freight is removed and the empty cars are made accessible to the carrier for removal from the unloading facilities.

F. Except as otherwise specifically authorized by the Interstate Commerce Commission, 24 hours free time, computed without notice from the first 7 a.m. after loading is completed, will be allowed on each car received from vessel for furnishing of forwarding instructions, including instructions for movements to other tracks, industries or stations within the port area.

10. When more than one demurrage tariff is effective at the same time at any station, separate average demurrage agreement accounts must be maintained for traffic subject to each applicable demurrage tariff.

PROPOSAL VII

Minimum quantity and Car Service Rules in Freight Tariffs

A. Except as otherwise provided in paragraphs (1) and (2), no carrier shall publish or participate as an origin carrier in any freight rates unless it owns, leases or otherwise controls sufficient equipment, of the kind required by its tariff provisions, to be used to transport the traffic anticipated.

1. This rule shall not apply to rates requiring that shippers or consignees furnish the cars to be used.

2. This rule shall not apply to class II or to switching and Terminal companies to the extent that their class I connections furnish evidence of their ability and consent to furnish the cars required.

B. Car ownership requirements shall be separately computed for general service and for special service freight cars.

C. General Service cars

1. General Service Cars are defined as cars which are suitable for loading with general commodities, either in packages or in bulk, and which, after unloading, may be reloaded without restrictions other than those contained in Car Service Rules 1, 2, or 3.

2. In computing ownership requirements of general service freight cars, the following shall be considered.

a. Kind of car required, including interior platform dimensions, cubic capacity, weight carrying capacity, load restraining devices, load cushioning devices, and door openings.

b. Loading characteristics of the freight, including density, whether in bulk or in packages, kind, size and shape of packages, or of freight.

c. Adequacy of present ownership of cars of the same kind, as measured by the freight car ownership formula established by the Interstate Commerce Commission.

d. The effect on the adequacy of the existing freight car ownership to handle present traffic that will result from the new or modified tariff requirements.

e. Orders for cars for the purpose of correcting existing deficiencies in car ownership, or for providing cars needed to meet the requirements of new or revised tariff provisions, or both.

D. Special Service Freight Cars

1. Special Service Freight Cars are defined as freight cars which are restricted in their use by one or more of the following:

a. By physical design.

b. By assignment to specific shippers.

c. By prohibition against reloading in general service, subject only to the provisions of Car Service Rules 1, 2, or 3. Such prohibitions may be:

1. Instructions of the owner.

2. Orders, other than temporary or emergency orders of either the Car Service Division, Association of American Railroads, or of the Interstate Commerce Commission.

2. In computing ownership requirements of Special Service Freight cars the following will be considered:

a. Availability of existing cars of the same kind by transfer from other movements.

b. Estimated turn-around time, based on consecutive loading dates.

c. Orders for cars of the same type for the purpose of correcting existing ownership deficiencies, of providing cars needed to meet the requirements of the new or revised tariff provisions, or both.

PROPOSAL VIII

When tariff provisions require the unloading of carload freight by carriers, and when the number of cars on hand to be unloaded exceeds the number that can be unloaded within the next 48 hours, exclusive of Saturdays, Sundays, and holidays named in Agent H. R. Hinsch's Freight Tariff 4-Series, the carrier performing the unloading will immediately place an embargo against additional shipments requiring unloading by it at the point involved. Embargoes placed under this proposal shall not be canceled until the number of cars to be unloaded is less than the number that can be unloaded during the next 24-hour period and provided that none of the cars awaiting unloading has been held for unloading in excess of 24 hours, commencing with the first 7 a.m., exclusive of Saturdays, Sundays, and holidays, of the date prior to the cancellation of the embargo.

In computing the number of cars that can be unloaded in a 24-hour period, the total number of cars unloaded during the immediately preceding 4-week period shall be divided by the total number of days on which any cars were unloaded during the period.

Carriers will maintain a current daily record of the average rate of unloading during the immediately preceding 4-week period and of the number of cars available, including those held for unloading and those in process of unloading.

PROPOSAL IX

Report to the Interstate Commerce Commission not later than the 10th day of each month the following data pertaining to assigned cars for the previous calendar month:

1. Reporting carrier
2. Cars assigned

a. Shipper
b. Station
c. Commodity
d. Number of cars assigned
e. Name of carrier furnishing the cars
f. AAR mechanical designation
g. Length
h. Net increase or decrease in assignment since last reporting date.
i. Number of loads originated by cars in the assignment since last reporting date.
j. Number of cars in assignment idle for repairs on reporting date.
k. Number of cars in assignment idle for modification on reporting date.

PROPOSAL X

Report to the Interstate Commerce Commission as of the 7th, 14th, 21st, and last day of each month the following data by kinds of cars listed:

1. Cars

Plain boxcars with inside length less than 44'8" and with doors less than 8'.

Plain boxcars with inside length less than 44'8" and with doors 8' and wider.

Plain boxcars with inside length 44'8" and over.

All Equipped boxcars.

Covered Hopper Cars.

All Refrigerator Cars.

All Open Hopper Cars.

All Plain Gondolas.

All Equipped Gondolas.

All Plain flat cars less than 151,000 pounds capacity.

All Flat cars equipped for handling highway trailers or containers.

All multi-level flat cars.

All other flat cars.

All Tank Cars.

All other cars.

2. Reports to Include

a. Ownership

i. total

ii. out of service for light repairs

iii. out of service for heavy repairs including cars held for retirement or dismantling

iv. serviceable ownership

v. retired since last report

vi. installed since last report

vii. on order

b. Cars loaded since last report

i. revenue freight

ii. company material

iii. total

iv. loaded cars received from connections

c. Cars on line

i. System
ii. Foreign
iii. Private
iv. Total

d. Average Daily Shortage for period
e. Average daily surplus for period

APPENDIX D

CODE OF CAR SERVICE RULES

Rule 1 Foreign cars, empty at a junction with the home road, must be:

(a) Loaded at that junction to or via home rails, or

(b) Delivered empty at that junction to home road, except in instances where Rule 6 has been invoked, or unless otherwise agreed by roads involved.

Rule 2 Foreign empty cars other than those covered in Rule 1 shall be:

(a) Loaded to or via owner's rails.

(b) Loaded to a destination closer to owner's rails than is the loading station or delivered empty to a short line or switch loading road for such loading. (Car Selection Chart is designed to aid in so selecting cars for loading.)

(c) Delivered empty to the home road at any junction subject to Rule 6.

(d) Delivered empty to the road from which originally received under load, at the junction where received, EXCEPT that when handled in road-haul service, cars of direct connection ownership may not be delivered empty to a road which does not have a direct connection with the car owner.

(e) Returned empty to the delivering road when handled only in switching service.

Note.—Box cars covered by Car Service Division Special Car Order No. 90 should be handled as provided therein.

Notes to car service rules 1 and 2.—

(A) 1. "Junction" as used in these rules means stations where roads interchange cars at a common point or within switching limits over their own lines, or an intermediate line or lines, or a car ferry or float within such limits. Roads so interchanging cars shall be considered direct connections.

2. This information should be published in THE OFFICIAL RAILWAY EQUIPMENT REGISTER, and when the interchange is other than over their own rails, the channel through which the interchange is effected must be shown.

(B) Inequities resulting from these rules should be resolved by negotiations between the roads involved, and exception to the rules is permitted following such resolvement and concurrence by the Car Service Division.

Rule 3 Each originating carrier must use reasonable diligence to see that foreign cars are loaded or handled in accordance with provisions of Car Service Rules.

Rule 4 Cars of railway ownership must not be delivered to a steamship, ferry or barge line for transportation by water, except for transportation in interstate commerce by common carriers by water between points within the continental United States (not including Alaska), without permission of the owner filed with the Car Service Division.

Rule 5 Empty cars may be short-routed at a reciprocal rate of eight cents (8¢) per mile plus switching charges, with a minimum of one hundred (100) miles for each road handling the car, the road

requesting the service to pay the charges and per diem or mileage allowance costs accruing to the handling line or lines.

Note A.—"Empty cars, when short-routed in accordance with car service rules, should be moved on empty car waybill, the road arranging for the service to pay the charges through bill and voucher plan. Under no circumstances should revenue waybill be issued with charges for such movement". (A.A.R. Accounting Division Rule).

Note B.—The term "switching charges" is defined as charges assessed under applicable tariffs by a railroad which does not perform any line haul in the process of a short route movement.

Question.—Does the loading or use of a car being handled under Rule 5 nullify the right of road performing the service to collect for all or any portion of the service rendered?

Answer.—Yes. (October 1, 1925).

Rule 6 If a movement of traffic requires return of empty cars to home road via the junction at which cars were delivered in interchange under load, the home road may demand return of empty cars at such junction, except that cars offered a home road for repairs, in accordance with the Interchange Rules of the Mechanical Division, must be accepted by owners at any junction point.

Note.—Notice of an intent on the part of any road to invoke the provisions of this Rule should be issued by the designated transportation officer to the designated transportation officer of the road to which the notice is addressed, such notice to specify the type of cars and particular junction points involved.

Such notice may not limit acceptance to the individual cars previously delivered but may require the return of an equivalent number of home cars of

the type specified, at junction point where delivered loaded.

INTERPRETATIONS.

1. The words "Movement of Traffic" in this rule mean the movement regularly through any junction point of any kind of traffic in (or on) the same class of car.

2. Car Service Rule 6 gives to a railroad which may deliver regularly, to a connection through any junction, traffic of any kind in (or on) its cars of the same class, the right to require connection participating in the handling of traffic from the junction point, to use that point of interchange for the return of the class of empty cars engaged in the service, instead of returning them at some other junction less favorable to the receiving (owning) railroad. (April 25, 1923).

Rule 7 (A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.

Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data (1) for forwarding and to insure delivery. This responsibility shall continue as respects cars rejected by the car inspector of the receiving road until such cars have been returned to the delivering road. The effect of this paragraph may be altered by special arrangements made between the roads concerned.

(1) *Note.*—The character of the necessary data will be determined by each receiving road in accordance with the conditions of its service.

(B) (1) Each railroad, with due regard for efficient and economical railroad operating practices or conditions beyond the carriers' control, will interchange within 24 hours after arrival or release at interchange station, all cars which it properly may interchange in accordance with the provisions of Section (A) of this rule, subject to the following exceptions (2) to (4) inclusive:

(2) Cars covered by an embargo.

(3) Cars covered by written or telegraphic notice given by the intended receiving line stating that it is unable to receive.

(4) Cars which cannot be placed physically upon the designated interchange track.

(C) When interchange required by Section (B), Paragraph (1) of the rule cannot be accomplished, the provisions of Per Diem Rule 15 will apply.

INTERPRETATIONS

Question.—After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?

Answer.—Yes. (June 20, 1924.)

Question.—Where a car has been accepted by the inspector of the receiving road, but is not accompanied or preceded by proper data for forwarding and to insure delivery, is the receiving road relieved from responsibility for damage to the car and contents?

Answer.—No; but the rule gives the right to receiving road to refuse to accept in interchange cars which are not accompanied or preceded by proper data

for forwarding and to insure delivery, and when such cars are not accepted in interchange they are still in the possession of the delivering road. (June 20, 1924).

(2) When a loaded freight car containing a shipment destined to a non-agency station (a station at which there is no freight agent), billed collect or insufficiently prepaid, is offered in interchange, it shall be accepted from the connecting carrier and forwarded to destination. (January 25, 1926).

(2) *Note.*—Rules of the A.A.R. Accounting Division make provision for the adjustment of freight charges between the originating and the delivering carrier.

Rule 8 The placing of advertisments or banners of any kind upon any freight or passenger car or locomotive (including permanent stakes which are a part of open top cars), is prohibited except:

(a) Advertisements or banners may be placed thereon for photographic purposes only, while such equipment is at rest on private tracks, or on service tracks of the railroad and when so placed must be removed prior to movements of the equipment, the placement and removal to be by and at the expense of the shipper or consignee.

(b) Advertisements may be painted upon passenger equipment used in special train movements, the expense of painting and removal to be borne by the user.

This does not prohibit the placing of advertisements or banners on the lading or attaching them to temporary stakes used to secure the lading on open top cars.

Note.—See Mechanical Division Interchange Rule 36.

Rule 9 When private tank cars are unloaded, the owner or lessee must issue instructions for the disposition of the empty car to the agent at point of un-

loading either direct or through consignee. If the owner or lessee fails to have instructions in the hands of the railroad agent having jurisdiction at point of unloading, prior to the time the car is made empty, to either hold or forward the car, the agent is authorized to forward the empty car to the origin point via the reverse of the loaded route. Shipping instructions must show name of commodity last loaded in car. The agent will bill (4) each car to final destination showing name of the consignee and full route including junction and name of commodity last loaded in car, using standard form of revenue waybill. The word "consignee" in this connection signifies the party to whom the empty tank car is forwarded.

(4) The word "bill" in this connection covers non-revenue billing which must be on standard form of waybill.

Rule 10 Unless otherwise agreed, the cost of transferring or rearranging the lading of freight cars shall be assumed as follows: (See Mechanical Division Interchange Rules 2, 107-A and 107-B.)

1. BY THE DELIVERING ROAD—When transfer or rearrangement of load at junction point is due to:

(a) Defective equipment that is not safe to run according to the Interchange Rules of the Mechanical Division, except where the repairs can be made under load as per Mechanical Division Interchange Rule 2.

(b) Contents improperly loaded (not complying with the Rules Governing the Loading of Commodities on Open Top Cars or General Rules 1 to 6 inclusive of Operating-Transportation Division Circular No. 42-C, covering Loading of Carload Shipments of Commodities in Closed Cars, or the Interstate Commerce Commission regulations for the Transportation of Explosives and Other Dangerous Articles by Freight and by Express), even though the load may

have originally conformed to such rules, except as provided in Paragraph 2(a).

Note.—It is not intended that closed cars be opened at junction point for interior inspection of loads unless the car shows exterior evidence of distress apparently due to lading conditions, or unless there is reason to believe that car had not been loaded in accordance with the above rules.

(c) Delivering road not desiring its equipment to go beyond junction point.

2. BY THE ROAD ON WHICH CAR WAS LOADED—(Originating road-haul carrier)—When transfer or rearrangement of load at junction or intermediate point is due to:

(a) (1) Load exceeding the stenciled load limit of car, or,

(2) Gross weight of car and lading in excess of the published weight restriction indicated in the current issue of the RAILWAY LINE CLEARANCES publication, or

(3) Overloaded under the provisions of the AAR Loading Rules, except when lading becomes a concentrated overload due to shifting of lading enroute.

(b) Dimensions of load of open top cars being in excess of the published clearances of any of the roads indicated in the routing, as shown in the current issue of the publication RAILWAY LINE CLEARANCES.

(c) Closed car having an inside length of over 50 ft. 6 in. which will not pass published clearances of any of the roads covered by the routing, as shown in the current issue of the publication RAILWAY LINE CLEARANCES.

(d) Car which cannot pass the approved third rail clearances of the Association of American Railroads, as shown in the current issue of the publication RAILWAY LINE CLEARANCES.

(e) Cars which cannot be handled to destination on account of exceeding the approved limited clearances of the Association of American Railroads shown in the current issue of the publication RAILWAY LINE CLEARANCES—(See Outline Diagram of Approved Limited Clearances of AAR appearing on other page).

Note.—Existing cars with door fixtures, handholds, etc., projecting beyond 10 feet 8 inches extreme width, but not beyond 10 feet 10 inches, will be considered as meeting the requirement of Paragraph (e).

Note.—The term "Originating road-haul carrier" is interpreted as the road which originates the billing and participates in the road-haul revenue.

3. BY THE RECEIVING ROAD—When transfer or rearrangement of load at junction or intermediate point is due to:

(a) Cars which are properly loaded in accordance with provisions of Section 2.

Note.—Unless otherwise agreed, when receiving road refuses to accept car requiring transfer or adjustment of load, the delivering road may effect transfer or adjustment of load and render bill against receiving road.

(b) Cars which cannot be moved through on account of any other disability of receiving line.

(c) Receiving road desiring to transfer to save cost of mileage or per diem.

Note 1.—Charges for actual labor and material, also for use of wrecking outfit, hoist, derrick, traveling crane or similar facilities used in the transfer or adjustment of lading under this rule, shall be as provided for in Mechanical Division Interchange Rules 107-A and 107-B.

Note 2.—Bills for work performed under this Rule may be declined if not rendered within 1 year from the date work is completed.

Rule 11 (A) Unless otherwise agreed, when carload freight is delivered in interchange without evidence of proper weight shown on billing, any participating road-haul carrier may weigh the car, and the originating road-haul carrier shall pay it $10.00 per car weighed, except as provided in paragraph (C), and except that bills under this rule must be presented within 3 years from the date of waybill originating movement of car weighed.

(B) The point at which loading is completed will be considered as the point of origin of a stop-off car. (Rule 51 of Consolidated Freight Classification No. 19, vacated September 22, 1970, after which the provision of individual tariffs apply.)

(C) The first road-haul carrier is responsible for proper weighing of carload freight originating on railroads less than 100 miles in length without scale facilities, and for showing evidence of proper weight on the waybill. This paragraph does not apply to railroads less than 100 miles in length which had track scale facilities as of April 1, 1946, unless otherwise agreed as provided in paragraph (A).

(D) As evidence of proper weight, notation shall be made on waybill (also on non-revenue car movement waybill if used) in accordance with the AAR Accounting Division Freight Mandatory Rules No. 25, 26, 27 and 33, or as amended; except the penalty charge provided for in Car Service Rule 11 will not be applicable to shipments moving on waybills carrying in "Weighed" block (or on non-revenue car movement waybill if used) endorsement—"Do Not Weigh—Destination Agreement Weights" or "Do Not Weigh—Destination Weights Apply".

(E) The charge prescribed in this rule is not intended to cover the cost of weighing, but is a penalty for failure to comply with applicable Mandatory Rules of the AAR Accounting Division.

(F) The following definitions will govern in the application of this Rule:

1. Originating Road-Haul Carrier

(a) A road other than terminal switching road on which a carload is loaded.

(b) "Carrier Road" as defined in the Code of Switching Reclaim Rules.

2. Terminal Switching Road—The same as published in the Code of Switching Reclaim Rules.

3. Switching Charge—A Switching Charge is a charge assessed on a ton or a car basis for handling a car in switching service. (This is in accord with Per Diem Rule 5, Interpretation (a).)

4. Grain—All commodities listed under the caption GRAIN in Consolidated Freight Classification No. 20 or in Uniform Freight Classification No. 2, Supplements thereto, or reissues thereof.

Note.—Rule 11 does not apply to cars loaded with livestock, grain, soy beans, or perishables under refrigeration.

Rule 12 Cars containing refuse may be rejected by the receiving road when offered in interchange as empty cars.

Rule 13 When trains of one railroad use the tracks of another in avoiding washouts or other obstructions, unless other arrangements exist between the roads concerned, the detour shall be made under the terms of the Detour Agreement approved by the Association, which terms are made part of this rule. 6

The road for which the train is detoured shall pay the regular per diem (or mileage), to the owners of the cars in the train, including the road owning the track, if any of its cars shall be in the detoured train. All mileage charges shall be at actual distance over the route used.

6 Note.—When such an agreement is entered into, it should be executed on behalf of each company party thereto by an executive officer thereof.

Rule 14 (A) Box cars classed as suitable for grain loading or better, or refrigerator cars, must not be loaded with any of the contaminating commodities listed below. If so loaded and it becomes necessary to renew floors, lining, or sheathing (including associated parts), or portions thereof, in order to restore car to previous loading classification because of contamination due to such loading, the cost of the repairs, notwithstanding any other provisions of these rules, shall be assumed by the road (either switching or road haul) responsible for furnishing the car for such loading.

1. Animal Products:

(a) Hides, Pelts, or Skins.
(b) Glue Stock.
(c) Manure, or Fertilizing Compounds with Contaminating Odor.
(d) Meat Refuse, Offal, Tankage, or Waste from Slaughtered Animals.
(e) Bones, or Horns with Contaminating Odor.
(f) Dried Blood.
(g) Tallow.

2. Copra.
3. Fish Scrap or Fish Meal.
4. Shell Fish in Bulk.
5. Shells (clam, mussel, or oyster) in raw state with contaminating odor.
6. Asphalt (Asphaltum) Natural, or Asphalt Compounds, by-products or Petroleum.
7. Creosote, or Creosoted Materials.
8. Lamp Black, Carbon Black (all types), Graphite (Black Lead), or Plumbago.

9. Poisonous Chemicals or Compounds in containers or bulk.

(B) The following commodities must not be loaded in foreign box cars classed as suitable for grain loading or better, or refrigerator cars, except that such cars of any road participating in the haul may be used when such usage is authorized by the owner.

1. Battery parts such as cylinders, frames, or plates, burned out or scrap.
2. Charcoal, in bulk or cloth bags.
3. Coal, coke, lignite or briquettes.
4. Containers, empty, such as barrels, cans, drums or pails when previous use was for acids, asphalt, chemicals, creosote, grease, oils, tar, tankage and similar contaiminating commodities, unless properly cleaned inside and outside to prevent contamination.
5. Cotton or other seeds, hulls, fibre or shavings, when oily or dyed, in bulk or in containers which would result in contamination.
6. Glass, crushed, ground or powdered, in containers or in bulk.
7. Graphite in containers, which would result in contamination.
8. Greasy or oily products in bulk or in containers which would result in contamination, such as:

(a) Metal borings and turnings.
(b) Bearings.
(c) Chains.
(d) Electrical apparatus.
(e) Iron or steel bars, plates or shapes.
(f) Machine parts.
(g) Machinery.
(h) Pipe and pipe fittings.
(i) Scrap.

(j) Tin plate (oiled).

(k) Vehicle parts, including farm implements and tractors.

9. Insecticides, fungicides, insect repellents, vermine exterminators, poisonous, in containers or bulk.

10. Peat, or peat moss in bulk.

11. Tar and tar products in barrels, and tar refuse.

12. Acids.

13. Grease.

14. Molasses.

15. Oils.

16. Petroleum or petroleum products, including compounded oils or greases having a petroleum base.

Rule 15 (1) Carriers shall record all requests for cars for loading, which shall include the following information if available:

(a) Date and time.

(b) Name of party.

(c) Name of person receiving request.

(d) Kind and size of cars wanted.

(e) Number of cars wanted.

(f) Date wanted (See Note 1 below).

(g) Commodity to be loaded.

(h) Destination and route.

Note 1.—If order covers more than one date it must state number of cars wanted separately for each day.

(2) Request for cars shall be accepted only by the road on which the car is to be loaded.

(3) On cars originating in switching service, the road performing the switching service shall, if cars of suitable ownership under these rules are immediately available, furnish cars for loading for road-haul via another carrier. If such cars are not immediately available, the switching carrier shall immediately or-

der suitable cars from the designated road-haul carrier in the manner required by paragraph (1). Cars ordered by switching carriers from road-haul carriers for return loading in road-haul service will be furnished by road-haul carriers in the same manner and to the same extent as cars ordered by industries directly served by it.

(4) Switching carriers are obligated to furnish or arrange for cars required for loading to destinations within the same switching limits.

Rule 16 (A) When, after the effective date of these rules, specific cars covered by CSD 145 and 435 series are assigned to a shipper for his exclusive use, such assignment shall be made subject to the following conditions:

1. Shipper must request in writing of originating road-haul carrier(s) assignment at least ten (10) days before their intended use of a specific number of cars. If originating carrier(s) agrees to such assignment but desires other road-haul carriers to participate in assignment, it will advise shipper accordingly and will make request on such other carriers.

2. Pools of assigned cars including cars of ownership other than the originating road-haul carriers may be expanded only upon the acceptance by the originating road-haul carriers.

3. When cars are assigned in accordance with this Rule, they shall remain and be treated as assigned cars until the shipper or owning railroad notifies the other and the originating road-haul carrier(s) in writing at least ten (10) days in advance that such assignment is modified or canceled.

(B) Assigned cars shall not be held empty enroute to loading point, except as follows:

(a) Upon written instructions of assignee.

(b) When assignee cannot immediately accept on arrival at loading point and cars cannot reasonably be held on other tracks at loading points.

(c) For necessary repairs (not cleaning).

(C) The present and future assignment by a carrier of specific cars for the exclusive use of a shipper at a particular point shall be reported by such carrier to the Operating-Transportation Division of the Association of American Railroads by car initial, number, car type code and specific assignment. Each carrier assigning such cars shall advise the Operating Transportation Division of the Association of American Railroads of any change in assignment not later than the last working day of the month in which change occurred. The Operating-Transportation Division of the Association of American Railroads will maintain a current record of cars assigned, and distribute such information to car owners assigning cars to a specific shipper at each location, as well as to the roads originating traffic from such assignments, including originating switching line serving the shipper involved. The foregoing provisions of this paragraph shall not apply when all cars assigned to the exclusive use of a shipper at a particular point are system cars of a single road-haul carrier serving the shipper at such point.

(D) Assigned cars are exempt from Car Service Rules 1 and 2 at initial loading stations.

Rule 17 Loaded cars will not be held at any point between origin and destination, with due regard for efficient railroad operating practices, except as follows:

(a) To perform any service specifically authorized by applicable tariffs.

(b) To make necessary repairs to cars, including adjustment of lading.

(c) To obtain necessary authority for movement of car, or to obtain authority for transfer or rearrangement of lading, when loaded to dimensions or weights in excess of those published in Railway Line Clearances.

(d) When consignee is unable to accept immediately upon arrival and car cannot reasonably be held at destination.

(e) Cars loaded in violation of an embargo.

(f) When normal route of movement is blocked because of accident, high water, damage to track or other disability of this railroad.

Rule 18 1. Each railroad will undertake to:

(A) Placing of Cars;

(1) Use reasonable diligence to place loaded cars promptly following arrival at destination.

(B) Removal of Cars:

(1) Carriers shall use reasonable diligence to promptly remove empty cars from point of unloading or interchange tracks of industrial plants following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper with approval of carrier for reloading.

(2) Carriers shall use reasonable diligence to:

(a) Promptly remove outbound loaded freight cars from point of loading or interchange tracks of industrial plants following acceptance by carrier of shipping instructions; and

(b) Thereafter promptly forward such cars in line-haul service.

(3) Cars subject to Paragraphs (B) (1) and (B) (2) which are not in fact made accessible to the

carrier because of the actions of the consignee or consignor, shall be deemed not to have been released until such cars are in fact made accessible to the carrier.

2. Each railroad will, with due regard for efficient railroad operating practices, hold no more cars for prospective loading at any time for any industry which it serves, than those needed to protect current requirements.

APPENDIX E

Formula for determining car ownership requirements with national interline car requirements allocated among roads on the basis of interline car days (excludes all private car data)

(BUREAU OF ACCOUNTS, INTERSTATE COMMERCE COMMISSION)

Line No.	Item	Source[1]
	Calculation of serviceable car days applicable to local and interline service	
1	Total car days of cars originated and terminated on line	Appendixes E and F, section XIV, items (A)(1) plus (A)(2)
2	Total car days of cars originated and delivered to connections, received from connections and terminated, and bridged to connections	Appendixes E and F, section XIV, sum of items (B)(1), (B)(2), (C)(1)(a), (C)(1)(b), (C)(2)(a), and (H)(3)(a).
3	Total local and interline car days	Line 1 plus line 2
4	Total bad order days	Appendixes E and F, section XIV, items (I)(1) plus (I)(2)
5	Percent of bad order days to total car days	Line 4 divided by line 3
6	Bad order car days assignable to local car days	Line 1 multiplied by line 5
7	Bad order car days assignable to interline car days	Line 2 multiplied by line 5
8	Total serviceable car days—local service	Line 1 minus line 6
9	Total serviceable car days—interline service	Line 2 minus line 7
10	"No day" cars	Appendixes E and F, section XIV, item (D)(1)
11	Average number of hours per "no day" car	Appendixes E and F, section XIV, item (D)(2)
12	"No day" car days	Line 10 multiplied by 11 divided by 24 hours
13	Total serviceable car days including "no day" car days—interline service	Line 9 plus line 12
14	Each road's percentage of interline car days—adjusted for "no day" car days	Line 13, columns (4) to (10) divided by U.S. total line 13, column (3).
15	Each road's serviceable interline car days after adjustment for "no day" car days	Line 9 multiplied by percentage in line 14
16	Total reclaim days paid	Appendixes E and F, section XIV, item (O)(9)(b)
17	Total reclaim days received	Appendixes E and F, section XIV, item (O)(10)(b)
18	Total serviceable interline car days after adjustment for reclaim days	Line 15 plus line 16 minus line 17

See footnote at end of table.

Formula for determining car ownership requirements with national interline car requirements allocated among roads on the basis of interline car days (excludes all private car data)—Continued

(BUREAU OF ACCOUNTS, INTERSTATE COMMERCE COMMISSION)—*Continued*

Line No.	Item	Source
	Calculation of serviceable car days applicable to local and interline service—Continued	
19	Serviceable cars required to protect local traffic carried	Line 8 divided by 31 days
20	Serviceable cars required to protect interline traffic carried	Line 18 divided by 31 days
	Requirement to protect local and interline shortages	
21	Total carloads originated	Appendixes C and D, section I, item (D)
22	Total carloads originated and terminated on line	Appendixes C and D, section III, item (A)
23	Total carloads originated and delivered to connections	Line 21 minus line 22
24	Percentage of cars originated in local service	Line 22 divided by line 21
25	Average daily shortage of freight cars	Appendixes C and D, section VII, item (A), sum of 4 weeks divided by 28.
26	Average daily shortage—local service	Line 25 multiplied by percents in line 24
27	Average daily shortage—interline service	Line 25 minus line 26
28	Serviceable car days per car loaded in local service	Line 8 divided by line 22
29	Serviceable cars required to protect local shortages	Line 26 multiplied by line 28
30	Serviceable car days per car loaded in interline service—United States	Line 18, column (3) divided by line 23, column (3)
31	Total serviceable cars required to protect interline shortages—through to destination	Line 27, column (3) multiplied by line 30, column (3)
32	Total car days of cars loaded and delivered to connections	Appendixes E and F section XIV, items (B)(1) plus (B)(2)
33	Bad order car days assignable to cars loaded and delivered to connections	Line 32 multiplied by line 9
34	Total serviceable car days on cars loaded and delivered to connections	Line 32 minus line 33
35	Serviceable car days per car loaded and delivered to connections	Line 34 divided by line 23

See footnote at end of table

Formula for determining car ownership requirements with national interline car requirements allocated among roads on the basis of interline car days (excludes all private car data)—Continued

(BUREAU OF ACCOUNTS, INTERSTATE COMMERCE COMMISSION)—*Continued*

Line No.	Item	Source[1]
	Requirement to protect local and interline shortages—Continued	
36	Each road's serviceable requirement to protect potential interline originations to the interchange	Line 27 multiplied by line 35
37	Remaining serviceable United States requirement to protect potential interline use—beyond the originating road	Line 31, column (3) minus line 36, column (3)
38	Each road's participation in serviceable interline car days	Line 18, columns (4) to (10) divided by United States total line 18, column (3).
39	Each road's serviceable requirement to protect potential interline use	Line 37 multiplied by percent in line 38
40	Each road's serviceable requirement to protect potential interline originations and use	Line 36 plus line 39
41	Total serviceable requirement to protect local and interline traffic carried and offered	Line 19 plus line 20 plus line 29 plus line 40
42	Total serviceable ownership—October 1, 1964	Appendixes C and D, section VIII, item (A) minus items (A)(1) and (A)(2).
43	(Excess) or deficiency	Line 41 minus line 42

[1] References to appendixes C, D, E, and F are to the appendixes to the order of July 29, 1964. Reference to sections and items are to sections and items in appendix B to the order of July 29, 1964. Pertinent portions thereof are shown in appendix A hereto.

APPENDIX F

Car ownership formula adopted by AAR on August 26, 1966

1. Total local car days = those loaded and empty car days used on cars loaded and terminated on line during the month of October 1964. [1] [Sec. XIV (A) (1)] + [Sec. XIV (A) (2)]

1(a). Total interline car days = those loaded and empty car days on cars loaded and delivered to connections, loaded cars received from connections and terminated on line, loaded cars received from connections and delivered to connections, and empty cars received from connections and delivered to connections. [Sec. XIV (B) (1)] + [Sec. XIV (B) (2)] + [Sec. XIV (C) (1) (a)] + [Sec. XIV (C) (1) (b)] + [Sec. XIV (C) (2) (a)] + [Sec. XIV (H) (1) (b)] + [Sec. XIV (H) (2) (a)] + [Sec. XIV (H) (3) (a)]

1(b). Total local and interline car days = sum of local plus interline car days. (Line 1 + line 1(a))

1(c). Total bad order car days = the total number of days cars were being held for heavy and light repairs during the month of October 1964 which were included in the total local and interline car days reported in 1 and 1(a). [Sec. XIV (I) (1)] + [Sec. XIV (I) (2)]

1(d). Percent bad order car days of total car days reported=the total number of bad order car days divided by the total of local and interline car days reported. (Line 1(c) ÷ 1(b))

1(e). Bad order local car days = the total num-

[1] Indicates section and subsection of ExParte No. 241 Questionnaire, appendix B to the order of July 29, 1964. These are also shown in appendix A hereto.

ber of local car days multiplied by the percent of bad order car days to total car days. (Line 1 x line 1(d))

1(f). Bad order interline car days = the total number of interline car days multiplied by the percent of bad order car days to total car days. (Line 1(a) x line 1(d))

Note: The computations in 1(e) and 1(f) break down the total bad order car days between local and interline on the same ratio as total car days break down between local and interline.

1(g). Serviceable local car days = the total number of local car days reported minus the proportionate number of total bad order car days computed as apportioned to local car days. (Line 1—line 1(e))

1(h). Serviceable interline car days = the total number of interline car days reported minus the proportionate number of the total bad order car days computed as apportioned to interline car days. (Line 1(e) – line 1(f))

2. Total cars loaded in local service = the number of cars reported as loaded and terminated on line during October 1964. [Sec. III (A) Total]

3. Serviceable car days per car loaded in local service = the total number of computed serviceable local car days used in October 1964 divided by the number of cars loaded in local service during October 1964. (Line 1 g) ÷ 31 days)

4. Serviceable cars used to protect local traffic = total serviceable local car days computed in October 1964 divided by 31 days in month. (Line 1(g) ÷ 31 days)

5. No day cars = the number of cars handled in less than a per diem day. [Sec. XIV (D)(1)]

6. "No day" car days = the number of cars handled in less than a per day multiplied by the average number of hours per car reported on these cars, di-

vided by 24 hours. [Sec. XIV (D) (1)] x [Sec. XIV (D) (2)] ÷ 24

6(a). Total reclaim days paid = the total number of per diem days on which reclaims were paid during October 1964. [Sec. XIV (O) (9) (b)]

6(b). Total reclaim days received = the total number of per diem days on which reclaims were received during October 1964. [Sec. XIV (O) (10) (b)]

7. Total serviceable interline car days chargeable =the total number of serviceable interline cars days reported in line 1(h) above plus the total number of "no day" car days computed in line 6 above plus the total number of reclaim car days paid in line 6(a) minus the total number of reclaim car days received in line 6(b) above.

8. Percent each road to total U. S. serviceable interline car days=the total serviceable interline car days chargeable to each road divided by the U. S. class I total of serviceable interline car days.

9. Total ownership October 1, 1964=the total number of cars owned as of October 1, 1964. [Sec. VIII (A)]

9(a). Bad order cars=the number of cars reported as held for heavy and light repairs as of October 1, 1964. [Sec. VIII(A) (1)]+[Sec. VIII(A) (2)]

9(b). Serviceable ownership October 1, 1964 = total ownership reported October 1, 1964 minus bad order cars October 1, 1964. (Line 9÷line 9(a))

10. Serviceable ownership obligation to protect interline traffic=the total number of serviceable interline car days divided by 31 days in October 1964. (Line 7÷31 days)

11. Total serviceable ownership obligation to the existing serviceable fleet to protect local and interline traffic=the number of serviceable cars used to protect local traffic as shown in line 4 above plus the

serviceable ownership to protect interline traffic as shown in line 10 above.

CAR SERVICE RULES OBSERVANCE CREDIT

12. Average number of foreign cars loaded daily and delivered to connections—the total number of foreign cars loaded and delivered to connections during October 1964 divided by the 31 days in the month. [Sec. III(B) Total Foreign] divided by 31.

13. Percent Car Service Rules Observance—percentage of Car Service Rules observance by districts developed by sampling of Car Service Division field men Car Service Rules observance checks.

13(a). Number of foreigns credited daily as loaded in accordance with Car Service Rules—the average number of foreign cars loaded daily and delivered to connections multiplied by the percent of Car Service Rules observance. (Line 12 x line 13)

13(b). Total car days on cars loaded and delivered to connections—the total loaded and empty car days reported during October 1964 on cars loaded and delivered to connections. [Sec. XIV(B)(1)]+Sec. XIV (B)(2)]

13(c). Bad order car days on cars loaded and delivered to connections—the total number of car days on cars loaded and delivered to connections multiplied by the percent of bad order car days of total car days. (Line 13(b) x line 1(d))

13(d). Serviceable car days on cars loaded and delivered to connections—total car days on cars loaded and delivered to connections minus the proportionate number of the total bad order car days computed as apportioned to total car days on cars loaded and delivered to connections. (Line 13(b)—line 13(c))

13(e). Serviceable car days per car loaded and delivered to connections—total serviceable car days on

cars loaded and delivered to connections in October 1964 divided by total number cars loaded and delivered to connections during October 1964. (Line 13(d) ÷line 23(a))

13(f). Serviceable ownership reduction due to Car Service Rules observance credit=total number of cars credited daily as loaded in accordance with Car Service Rules multiplied by the average serviceable car days per car on cars loaded and delivered to connections. (Line 13(a) x line 13(e))

13(g). Serviceable interline ownership obligation after allowing Car Service Rules credit=serviceable interline ownership obligation reported on line 10 minus number of cars credited as loaded in accordance with Car Service Rules on line 13(f).

14. Percent each roads obligation to the total serviceable interline fleet after allowing Car Service Rules credit=the serviceable interline ownership obligation of each road after allowing Car Service Rules credit divided by the total U. S. interline fleet required after allowing Car Service Rules credit. (Each road line 13(g)÷by U. S. total line 13(g))

14(a). Serviceable car obligation to existing interline fleet after Car Service Rules credit=existing serviceable interline fleet requirement line 10 multiplied by percent of obligation to interline fleet after Car Service Rules credit as shown on line 14.

CARS NEEDED TO PROTECT LOCAL AND INTERLINE SHORTAGES

15. Percent local loading of total loading=total cars loaded and terminated on line divided by total number cars loaded. [Sec. III(A) Total]÷[Sec. I (D) Total]

16. Average daily shortage=average of the four weekly shortages reported divided by 7. [Sec. VII (A)].

17. Average daily shortage for local loading= average daily shortage multiplied by the percent local loading of total loading. (Line 16 x line 15)

18. Average daily shortage for interline loading= average daily shortage minus average daily shortage for local loading. (Line 16—line 17)

18(a). Average daily loading local traffic=total number of cars loaded in local service during October 1964 divided by 31 days in the month. (Line 2÷31 days) [Sec. III(A) Total]÷31

19. Average daily adjusted potential local loading =average daily local loading plus ½ average daily shortage for local loading. (Line 18(a)+½ of line 17)

20. Serviceable cars required to protect adjusted shortages for local loading=½ of daily shortage for local loading multiplied by serviceable car days per car used in local service. (½ of line 17 x line 3)

21. Serviceable cars required to protect adjusted potential local traffic=total number of serviceable cars used to protect local traffic during October 1964 plus the number of serviceable cars required to protect ½ shortage for local loading during October 1964. (Line 4+line 20)

22. Average daily loading of interline traffic= total number of cars reported as loaded and delivered to connections during October 1964 divided by the 31 days in the month. [Sec. III(B) Total]÷31 or (Line 23(a) below÷31)

23. Average daily adjusted potential interline loading=the average daily loading of interline traffic plus ½ the average daily shortage for interline loading. (Line 22+½ of line 18)

23(a). Total cars loaded and delivered to connections=the number of cars loaded and delivered to connections during October 1964. [Sec III(B) Total]

23(b). National average serviceable car days per car in interline service=total U. S. serviceable interline car days from line 7 divided by U. S. total cars reported as loaded and delivered to connections on line 23(a).

23(c). Total serviceable cars needed to protect interline shortages=total shortages reported for interline loading multiplied by the national average of serviceable car days per car in interline service. (U.S. Total line 18 x line 23(b))

23(d). Each roads serviceable ownership obligation to protect potential interline originations=average daily shortage of each road for interline loading multiplied by each roads average number of serviceable car days per car loaded and delivered to connections. (Line 18 x line 13(e))

23(e). Remaining serviceable interline U. S. fleet to protect potential interline use=total number of serviceable cars needed to protect total U. S. interline shortages minus the total of each roads serviceable ownership needed to protect potential interline originations. (Total line 23(c)—Total line 23(d))

23(f). Each roads serviceable ownership requirement to protect potential interline use=serviceable U. S. interline fleet to protect potential interline use multiplied by each roads percent of total U. S. serviceable interline car days actually used during October 1964. (Line 23(e) x line 8)

24. Each roads serviceable ownership to protect potential interline originations and potential use=each roads serviceable ownership required to protect potential interline originations plus interline use. (Line 23(d)+line 23(f))

25. Serviceable ownership to protect adjusted potential interline traffic with credit for Car Service Rules observance=each roads serviceable car ownership obligations to the existing interline fleet after allowing credit for Car Service Rules observance plus ½ of serviceable ownership required to protect full potential interline originations and interline use. (Line 14(a)+½ of line 24)

SERVICEABLE OWNERSHIP OBLIGATION TO PROTECT ADJUSTED POTENTIAL LOCAL AND INTERLINE TRAFFIC

26. *With credit for Car Service Rules observance* =serviceable cars required to protect adjusted potential local loading (line 21) plus serviceable ownership needed to protect adjusted potential interline traffic *with credit for Car Service Rules observance* (line 25)

27. Excess or deficit serviceable ownership October 1, 1964 compared serviceable ownership requirement. (Line 9(b)—line 26)

APPENDIX G

Rules prescribed for mandatory observance [1]

Rule 1. Foreign cars, empty at a junction with the home road, must be:

(a) Loaded at that junction to or via home rails, or,

(b) Delivered empty at that junction to home road, except in instances where Rule 6 has been invoked, or unless otherwise agreed by roads involved.

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[1] Numbering of AAR Code of Car Service Rules retained. Appropriate definitions are shown at the end of this appendix.

Rule 2 Foreign empty cars other than those covered in Rule 1 shall be:

(a) Loaded to or via owner's rails.

(b) Loaded to a destination closer to owner's rails than is the loading station or delivered empty to a short line or switch loading road for such loading. (Car Selection Chart is designed to aid in so selecting cars for loading)

(c) Delivered empty to the home road at any junction subject to Rule 6.

(d) Delivered empty to the road from which originally received under load, at the junction where received, EXCEPT that when handled in road haul service, cars of direct connection ownership may not be delivered empty to a road which does not have a direct connection with the car owner.

(e) Return empty to the delivering road when handled only in switching service.

Note.—Box cars covered by Car Service Division Special Car Order No. 90 should be handled as provided therein.

NOTES TO CAR SERVICE RULES 1 AND 2

(A) 1. "Junction" as used in these rules means stations where roads interchange cars at a common point or within switching limits over their own lines, or an intermediate line or lines, or a car ferry or float within such limits. Roads so interchanging cars shall be considered direct connections.

2. This information should be published in THE OFFICIAL RAILWAY EQUIPMENT REGISTER, and when the interchange is other than over their own rails, the channel through which the interchange is effected must be shown.

(B) Inequities resulting from these rules should be resolved by negotiations between the roads involved,

and exception to the rules is permitted following such resolvement and concurrence by the Car Service Division.

Rule 6 [2] (To be followed in conjunction with Rules 1 and 2)

If a movement of traffic requires return of empty cars to home road via the junction at which cars were delivered in interchange under load, the home road may demand return of empty cars at such junction, except that cars offered a home road for repairs, in accordance with the Interchange Rules of the Mechanical Division, must be accepted by owners at any junction point.

Note.—Notice of an intent on the part of any road to invoke the provisions of this Rule should be issued by the designated transportation officer to the designated transportation officer of the road to which the notice is addressed, such notice to specify the type of cars and particular junction points involved.

Such notice may not limit acceptance to the individual cars previously delivered, but may require the return of an equivalent number of home cars of the type specified, at junction point where delivered loaded.

INTERPRETATIONS

1. The words "Movement of Traffic" in this Rule mean the movement regularly through any junction points of any kind of traffic in (or on) the same class of car.

2. Car Service Rule 6 gives to a railroad which may deliver regularly, to a connection through any junction, traffic of any kind in (or on) its cars of the same class, the right to require connection participating in the handling of traffic from the junction

[2] Rule 6 is not being prescribed. It is listed here for informational purposes only.

point, to use that point of interchange for the return of the class of empty cars engaged in the service, instead of returning them at some other junction less favorable to the receiving (owning) railroad. (April 25, 1923.)

Rule 7 (A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.

Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data (1) for forwarding and to insure delivery. This responsibility shall continue as respects cars rejected by the car inspector of the receiving road until such cars have been returned to the delivery road. The effect of this paragraph may be altered by special arrangements made between the roads concerned.

(1) *Note.*—The character of the necessary data will be determined by each receiving road in accordance with the conditions of its service.

(B) 1. Each railroad, with due regard for efficient and economical railroad operating practices or conditions beyond the carriers' control, will interchange within 24 hours after arrival or release at interchange station, all cars which it properly may interchange in accordance with the provisions of Section (A) of this rule, subject to the following exceptions (2) to (4) inclusive:

2. Cars covered by an embargo.

3. Cars covered by written or telegraphic notice given by the intended receiving line stating that it is unable to receive.

4. Cars which cannot be placed physically upon the designated interchange track.

(C) When interchange required by Section (B), Paragraph (1) of the rule cannot be accomplished, the provisions of Per Diem Rule 15 will apply.

INTERPRETATIONS

Question.—After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?

Answer.—Yes. (June 20, 1924.)

Question.—Where a car has been accepted by the inspector of the receiving road, but is not accompanied or preceded by proper data for forwarding and to insure delivery, is the receiving road relieved from responsibility for damage to the car and contents?

Answer.—No; but the rule gives the right to receiving road to refuse to accept in interchange cars which are not accompanied or preceded by proper data for forwarding and to insure delivery, and when such cars are not accepted in interchange they are still in the possession of the delivering road. (June 20, 1924.)

(2) When a loaded freight car containing a shipment destined to a non-agency station (a station at which there is no freight agent), billed collect or insufficiently prepaid, is offered in interchange, it shall be accepted from the connecting carrier and forwarded to destination. (January 25, 1926.)

(2) *Note.*—Rules of the A.A.R. Accounting Division make provision for the adjustment of freight charges between the originating and the delivering carrier.

PER DIEM RULE 15 [3]

(a) A road failing to receive promptly from a connection car on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection.

A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.

(b) If such failure to receive shall continue for more than 3 days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.

(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated representative at the point where cars are offered, of the total number of cars so held for it, and within 48 hours from midnight of the day cars are offered furnish the initials and numbers of the cars.

(d) The reclaim accruing under this rule on a car handled in terminal switching service can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.

(e) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the Per

[3] Per Diem Rule 15 is not being prescribed. It is listed here for informational purposes only in conjunction with Rule 7.

Diem on such cars for the following day, subject to local agreement as to time required to make delivery.

(f) This rule shall apply in connection with loaded cars interchanged between a common carrier by water and a common carrier by railroad except where in conflict with applicable tariffs and divisional agreements.

(g) This rule shall apply in connection with empty cars interchanged between a common carrier by water and a common carrier by railroad.

INTERPRETATIONS

15(a) Question:—In case a car held for a certain road is not delivered to that road, can reclaim be made against such road?

Answer:—No.

15(b) Question:—Is it necessary to furnish initials and numbers of cars held which have previously been reported by initials and number

Answer:—No.

15(c) Question:—When a road cannot accept cars from a connection, is it necessary for the connection to notify the delinquent line before midnight each day of the total number of cars held for which reclaim is to be made?

Answer:—Yes.

15(d) Question:—When a road has invoked the provisions of Car Service Rule 6, and cars are offered to that road at another junction point, is the holding road entitled to reclaim under Per Diem Rule 16?

Answer:—No.

Rule 15. (1) Carriers shall record all requests for cars for loading, which shall include the following information if available:

(a) Date and time.
(b) Name of party.
(c) Name of person receiving request.
(d) Kind and size of cars wanted.
(e) Number of cars wanted.
(f) Date wanted (See Note 1 below).
(g) Commodity to be loaded.
(h) Destination and route.

Note 1.—If order covers more than one date it must state number of cars wanted separately for each day.

(2) Request for cars shall be accepted only by the road on which the car is to be loaded.

(3) On cars originating in switching service, the road performing the switching service shall, if cars of suitable ownership under these rules are immediately available, furnish cars for loading for road-haul via another carrier. If such cars are not immediately available, the switching carrier shall immediately order suitable cars for the designated road-haul carrier in the manner required by paragraph (1). Cars ordered by switching carriers from road-haul carrier for return loading in road-haul service will be furnished by road-haul carriers in the same manner and to the same extent as cars ordered by industries directly served by it.

(4) Switching carriers are obligated to furnish or arrange for cars required for loading to destinations within the same switching limits.

Rule 16 (A) When, after the effective date of these rules, specific cars covered by CSD 145 and 435 series are assigned to a shipper for his exclusive use, such assignment shall be made subject to the following conditions:

1. Shipper must request in writing of originating road-haul carrier(s) assignment at least ten (10)

days before their intended use of a specific number of cars. If originating carrier(s) agrees to such assignment but desires other road-haul carriers to participate in assignment, it will advise shipper accordingly and will make request on such other carriers.

2. Pools of assigned cars including cars of ownership other than the originating road-haul carriers may be expanded only upon the acceptance by the originating road-haul carriers.

3. When cars are assigned in accordance with this Rule, they shall remain and be treated as assigned cars until the shipper or owning railroad notifies the other and the originating road-haul carrier(s) in writing at least ten (10) days in advance that such assignment is modified or canceled.

(B) Assigned cars shall not be held empty enroute to loading point, except as follows:

(a) Upon written instructions of assignee.

(b) When assignee cannot immediately accept on arrival at loading point and cars cannot reasonably be held on other tracks at loading points.

(c) For necessary repairs (not cleaning).

(C) The present and future assignment by a carrier of specific cars for the exclusive use of a shipper at a particular point shall be reported by such carrier to the Operating-Transportation Division of the Association of American Railroads by car initial, number, car type code and specific assignment. Each carrier assigning such cars shall advise the Operating-Transportation Division of the Association of American Railroads of any change in assignment not later than the last working day of the month in which change occurred. The Operating-Transportation Division of the Association of American Railroads will maintain a current record of cars assigned,

and distribute such information to car owners assigning cars to a specific shipper at each location, as well as to the roads originating traffic from such assignments, including originating switching line serving the shipper involved. The foregoing provisions of this paragraph shall not apply when all cars assigned to the exclusive use of a shipper at a particular point are system cars of a single road-haul carrier serving the shipper at such point.

(D) Assigned cars are exempt from Car Service Rules 1 and 2 at initial loading stations.

Rule 17. Loaded cars will not be held at any point between origin and destination, with due regard for efficient railroad operating practices, except as follows:

(a) To perform any service specifically authorized by applicable tariffs.

(b) To make necessary repairs to cars, including adjustment of lading.

(c) To obtain necessary authority for movement of car, or to obtain authority for transfer or rearrangement of lading, when loaded to dimensions or weights in excess of those published in Railway Line Clearances.

(d) When consignee is unable to accept immediately upon arrival and car cannot reasonably be held at destination.

(e) Cars loaded in violation of an embargo.

(f) When normal route of movement is blocked because of accident, high water, damage to track or other disability of this railroad.

Rule 18 1. Each railroad will undertake to:

(A) Placing of Cars:

(1) Use reasonable diligence to place loaded cars promptly following arrival at destination.

(B) Removal of Cars:

(1) Carriers shall use reasonable diligence to promptly remove empty cars from point of unloading or interchange tracks of industrial plants following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper with approval of carrier for reloading.

(2) Carriers shall use reasonable diligence to:

(a) Promptly remove outbound loaded freight cars from point of loading or interchange tracks of industrial plants following acceptance by carrier of shipping instructions; and

(b) Thereafter promptly forward such cars in line-haul service.

(3) Cars subject to Paragraphs (B) (1) and (B) (2) which are not in fact made accessible to the carrier because of the actions of the consignee or consignor, shall be deemed not to have been released until such cars are in fact made accessible to the carrier.

2. Each railroad will, with due regard for efficient railroad operating practices, hold no more cars for prospective loading at any time for any industry which it serves, than those needed to protect current requirements.

DEFINITIONS

1. *Foreign car.*—A car on a road to which it does not belong.

2. *Home road.*—The road which owns a car.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 21st day of August 1969.

EX PARTE NO. 241

INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES AND PRACTICES

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report and the report of the hearing examiner are made a part hereof:

It is ordered, That the respondents listed in appendix A to our order herein dated July 29, 1964, be, and they are hereby, notified and required to observe, enforce, and obey the Car Service Rules listed in appendix G to the report attached hereto.

It is further ordered, That the Car Service Rules prescribed in appendix G to the report attached hereto shall be published in the Federal Register.

It is further ordered, That each carrier listed in appendix A to our order herein dated July 29, 1964, shall collect data, as shown in appendix A to the report attached hereto to the extent necessary, during the period October 4-October 31, 1969, inclusive, and during the entire month of October of each succeeding year until further order of the Commission, for the purpose of applying the necessary data to the formula shown in appendix F to the report attached hereto.

It is further ordered, That the data collected in the next preceding paragraph, to the extent necessary for the application of the formula shown in appendix F to the report attached hereto, shall be filed with the Commission.

It is further ordered, That on or before June 30, 1970, and each succeeding year thereafter until further order of the Commission, the respondents listed in appendix A to our order herein dated July 29, 1964, shall file a report showing the results of the application of the data collected during the period October 4-October 31, 1969, inclusive, and during the entire month of October of each succeeding year thereafter until further order of the Commission, to the extent necessary, to the formula shown in appendix F to the report attached hereto and the steps taken to cure the deficiencies indicated by application of the aforesaid formula, if any, or to provide reasons why such steps were not taken.

It is further ordered, That this order shall take effect and be in force 30 days from the date of its service.

And it is further ordered, That this order shall continue in full force and effect until the further order of the Commission.

By the Commission, division 3.

ANDREW ANTHONY, JR.,
Acting Secretary.

(SEAL)

APPENDIX D

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 18th day of February 1970.

EX PARTE NO. 241

INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES AND PRACTICES

Upon consideration of the record in the above-entitled proceeding and of petitions for reconsideration, reargument and replies thereto filed by parties of record, and of:

(1) Petition of McLouth Steel Corporation, filed October 30, 1969, for leave to intervene, embracing tendered petition for clarification, modification, or reconsideration;

(2) Petition of General Mills, filed November 3, 1969, for leave to intervene, and for reconsideration, rehearing, and oral argument;

(3) Petition of Tennessee Valley Authority, filed November 3, 1969, for leave to intervene, embracing tendered petition for modification or clarification;

(4) Petition of Island Creek Coal Company, filed November 3, 1969, for leave to intervene, embracing tendered petition for clarification, modification, or reconsideration;

(5) Petition of Georgia Power Company, filed November 3, 1969, for leave to intervene, embracing tendered petition for reconsideration;

(6) Petition of Institute of Scrap Iron & Steel, Inc., filed November 3, 1969, for leave to intervene, embracing tendered petition for further hearing, modification of effective date and clarification;

(7) Petition of Pittston Clinchfield Coal Sales Corp., filed November 5, 1969, for leave to intervene, embracing tendered petition for clarification, modification, or reconsideration;

(8) Petition of Atlanta and St. Andrews Bay Railway Company, filed November 10, 1969, for leave to intervene and for acceptance of its motion for reconsideration filed October 30, 1969;

(9) Petition of Allied Chemical Corporation, filed November 17, 1969, for leave to intervene, and for reconsideration;

It appearing, That by order of November 4, 1969, the Commission, Commissioner Tuggle, postponed the effective date of the order of August 21, 1969, issued by division 3 in the above-entitled proceeding, until further order of the Commission;

It further appearing, That, except as noted below, the foregoing pleadings raise no new or material matters of fact or law not adequately considered and properly disposed of by the examiner in his report and by division 3 in its report and order (335 I.C.C. 264), and are not of such nature as to require the issuance of a report discussing the evidence in the light of the pleadings;

It further appearing, That petitioner, Atlanta and St. Andrews Bay Railway Company, contends that, among other matters, it was erroneously listed as a class I railroad in appendix A to our order entered on July 29, 1964, that on July 29, 1964, petitioner was a class I railroad and that subsequently thereto because of a reclassification, petitioner was classified as a class II railroad and continues to maintain that classification, but that no change is necessary in the requirements of the said order of July 29, 1964;

It further appearing, That in its petition for reconsideration the Bureau of Enforcement requests that notes and interpretations to rules prescribed for mandatory observance in appendix G to division 3's report be prescribed along with the rules and that such request should be granted;

It further appearing, That under certain circumstances a need for exceptions to the rules prescribed for mandatory observance in appendix G to division 3's report may occur and that agents of the Interstate Commerce Commission should be appointed to grant such exceptions;

It further appearing, That revision of the forms contained in appendix A to division 3's report which are designed to be utilized for collecting data to be used in the application of the approved formula in appendix F of that same report, as well as revision of the formula itself, for the purpose of uniformity, condensation, and simplification is advisable and necessary;

And it further appearing, That a new period for collection of data and a date for reporting the application of such data to the approved formula is necessary;

It is ordered, That petitioners not parties to the proceedings be, and they are hereby, permitted to intervene.

It is further ordered, That the Commission's applicable General Rules of Practice be, and they are hereby, waived and any of the heretofore described pleadings that are in a tendered state are hereby accepted for filing.

It is further ordered, That the conclusions and findings of division 3 in its report and order of August 21, 1969 (335 I.C.C. 264), be, and they are hereby,

modified to reflect the considerations set forth in the appearing paragraphs of this order.

It is further ordered, That the notes and interpretations to rules prescribed in appendix G starting on page 349 of the aforesaid report be made part of the rules to be observed along with the rules prescribed.

It is further ordered, That, in addition to the rules prescribed in appendix G to the aforesaid report, the following rule be, and it is hereby, prescribed:

Rule 19—Exceptions

Exceptions to the rules (prescribed by the Interstate Commeree Commission for mandatory observance) for the purpose of further improving car supply and utilization, increasing availability of cars to their owners, improving the efficiency of railroad operations, or alleviating inequities or hardships, may be authorized by the Director or Assistant Director of the Bureau of Operations, Interstate Commerce Commission, Washington, D. C.

It is further ordered, That the aforementioned Director and Assistant Director are hereby appointed agents of the Interstate Commerce Commision and vested with authority to grant exceptions to the rules prescribed in appendix G to the aforesaid report, including modifications to the rules in the subject order, for the purposes outlined in rule 19 shown in the next preceding ordering paragraph.

It is further ordered, That the aforesaid rule 19 in the second preceding ordering paragraph and our action herein in the third preceding ordering paragraph in prescribing the notes and interpretations to the rules prescribed in appendix G of the aforesaid report shall be published in the Federal Register.

It is further ordered, That the attached appendix A be substituted for appendix A to the aforesaid report

found on pages 309 through 316 and that the attached appendix F be substituted for appendix F to the aforesaid report found on pages 345-349.

It is further ordered, That each carrier listed in appendix A to our order herein dated July 29, 1964, shall collect data, as shown in substituted appendix A attached hereto during the period May 1-May 31, 1970, inclusive, and during the entire month of October of each year until further order of the Commission, for the purpose of applying such data to the formula shown in substituted appendix F attached hereto.

It is further ordered, That substituted appendix A attached hereto shall be filed with the Commission on or before the dates indicated thereon.

It is further ordered, That on or before February 1, 1971, the respondents listed in appendix A to our order herein dated July 29, 1964, shall file a report showing the results of the application of the data collected during the period May 1-May 31, 1970, inclusive, to the formula shown in substituted appendix F attached hereto and the steps taken to cure the deficiencies indicated by application of the aforesaid formula, if any, or to provide reasons why such steps were not taken.

It is further ordered, That on or before June 30, 1971, and each succeeding year thereafter until further order of the Commission, the respondents listed in appendix A to our order herein dated July 29, 1964, shall file a report showing the results of the application of the data collected during the entire month of October 1970, and each succeeding year thereafter until further order of the Commission, to the formula shown in substituted appendix F attached hereto and the steps taken to cure the deficiencies indicated by application of the aforesaid

formula, if any, or to provide reasons why such steps were not taken.

It is further ordered, That in all other respects the earlier described petitions herein be, and they are hereby, denied, for the reasons that, except as set forth herein, the findings of August 21, 1969, by the Commission, division 3, are in accordance with the evidence and the applicable law.

It is further ordered, That this order shall take effect and be in force on March 27, 1970.

It is further ordered, That this order shall continue in full force and effect until further order of the Commission and that the proceeding will be held open.

And it is further ordered, That the subject order be published in the bound volumes of the Commission's reports.

By the Commission.

H. NEIL GARSON,
Secretary.

(SEAL)

APPENDIX A

ICC USE ONLY

CARRIER NO.

INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423

EX PARTE NO. 241
ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP
MONTH OF OCTOBER, 19__

FORM FCS-1
Budget Bureau Approval No. 80-R-0288
Car Statistics-General Service Cars

Line No.	Item	Plain Box Cars								Plain Gondolas				General Service Hoppers		General Service Flatcars		Line No.
		40' Narrow Door		40' Wide Door		50' But Under 60'		60' or Longer		Under 61'		61' or Longer						
		Home	Foreign	Home	Foreign	Home	Foreign	Home	Foreign	Home	Foreign	Home	Foreign	Home	Foreign	Home	Foreign	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	
1.	Cars Owned and Leased - October 1		xxx		xxx		xxx		xxx		xxx		xxx		xxx		xxx	1.
2.	Cars Owned and Leased - November 1		xxx		xxx		xxx		xxx		xxx		xxx		xxx		xxx	2.
3.	Average Number of Cars Owned and Leased - October*		xxx		xxx		xxx		xxx		xxx		xxx		xxx		xxx	3.
4.	Car Days of Cars Owned and Leased - October		xxx		xxx		xxx		xxx		xxx		xxx		xxx		xxx	4.
5.	Cars on Line - Bad Order - September 30																	5.
6.	Cars on Line - Bad Order - October 31																	6.
7.	Average Number of Bad Order Cars on Line																	7.
8.	Bad Order Car Days - October																	8.
	Cars Loaded on Line and Loaded Cars Received from Connections																	
9.	Local																	9.
10.	Interline Forwarded																	10.
11.	Interline Received																	11.
12.	Bridged																	12.
13.	Total																	13.
	Detail of Car Days																	
14.	System Car Days off Line		xxx		xxx		xxx		xxx		xxx		xxx		xxx		xxx	14.
15.	Foreign Car Days on Line	xxx		xxx		xxx		xxx		xxx		xxx		xxx		xxx		15.
16.	Switch and Other Reclaim Days Paid																	16.
17.	Switch and Other Reclaim Days Received																	17.
18.	Rule 22 Reclaim Days Paid																	18.
19.	Rule 22 Reclaim Days Received																	19.
20.	"No Day" Car Days																	20.

	Other Car Statistics (a)	Total (b & c)	Total (d & e)	Total (f & g)	Total (h & i)	Total (j & k)	Total (l & m)	Total (n & o)	Total (p & q)	
21.	Turnaround Time of Local Cars									21.
22.	No. of Cars Studied to Determine Turnaround Time									22.
23.	Average Days Per Car Loaded and Delivered to Connections									23.
24.	No. of Cars Studied to Develop Average in Line 23									24.
25.	Average Daily Unfilled Orders - For Local Service									25.
26.	Average Daily Unfilled Orders - For Interline Service									26.
27.	Average Daily Cars in Excess of Orders									27.

I certify that to the best of my knowledge the above data are correct.

NAME _____

Title _____ DATE _____ 19__

REPORTING RAILROAD _____

APPENDIX F

ICC USE ONLY
CARRIER NO.

INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423

FORM FCS-2

EX PARTE NO. 241
Formula For Determining Freight Car Ownership Requirements
Month of October_____

Budget Bureau Approval No. 80 R-0388
Type of Car_____

Line No.	Item	Source	Individual Railroad	US Totals	Line No.
1	Tota. Serviceable Local Car Days	Form FCS-1 (Line 9 Home & Foreign) multiplied by line 21)			1
2	Total Serviceable Interline Car Days	Form FCS-2 (Line 3 minus line 1)		xxx	2
3	Total Serviceable Local & Interline Car Days Including Reclass Adjustment	Form FCS-1 (Line 15 minus line 16 plus line 4 plus line 16 plus line 18 minus line 17 minus line 19 minus line 20)		xxx	3
4	"No Day" Car Days	Form FCS-1 (Line 20)			4
5	Total Serviceable Interline Car Days Adjusted for "No Day" Car Days	Line 2 plus line 4			5[1]
6	Each Road's Percentage of Interline Car Days Adjusted for "No Day" Car Days	Line 5 divided by U.S. Total		100.000	6
7	Each Road's Serviceable Interline Car Days After Adjustment for "No Day" Car Days	Line 2 (U.S. Total) multiplied by line 6 (Individual Railroads)		xxx	7
8	Obligation to Protect Local Traffic	Line 1 divided by 21 days		xxx	8
9	Obligation to Protect Interline Traffic	Line 7 divided by 21 days			9
10	Total Obligation to Protect Local and Interline Traffic	Line 8 plus line 9		xxx	10
11	Serviceable Ownership (November 1)	Form FCS-1 (Line 2 minus line 6)		xxx	11
	Car Service Rules Observance Credit				
12	Average Number of Foreign Cars Loaded and Delivered to Connections Daily	Form FCS-1 (Line 10 [illegible] divided by 21)		xxx	12
13	Percent of Car Service Rules Observance	Assumptions of American Railroads		xxx	13
14	Number of Foreign Cars Credited Daily as Loaded in Accordance with Car Service Rules	Line 12 multiplied by line 13		xxx	14
15	Serviceable Car Days For Car Loaded and Delivered to Connections	Form FCS-1 (Line 22)		xxx	15
16	Serviceable Ownership Reduction Due to Car Service Rules Observance Credit	Line 14 multiplied by line 15			16
17	Serviceable Interline Ownership Obligation After Allowing Car Service Rule Credit	Line 9 minus line 16			17
18	Percent of Each Road's Obligation to the Total Serviceable Interline Fleet After Allowing Car Service Rules Credit	Line 17 divided by U.S. Total		100.000	18
19	Interline Obligation After Car Service Rules Credit	Line 9 (U.S. Total) multiplied by line 18 (Individual Railroads)			19[2]
	Cars Needed to Protect Local and Interline Shortages				
20	Average Daily Unfilled Orders-Local Service	Form FCS-1 (Line 24)		xxx	20
21	Average Daily Unfilled Orders-Interline Service	Form FCS-1 (Line 24)			21
22	Serviceable Cars Required to Protect Potential Local Loading	1/3 of Line 20 multiplied by Form FCS-1 (Line 21)		xxx	22
23	Total Cars Loaded and Delivered to Connections	Form FCS-1 (Line 10 Home & Foreign)			23
24	National Average Serviceable Car Days Per Car	Line 2 divided by line 23 (U.S. Total)	xxx		24[3]
25	Total Cars Needed to Protect Interline Shortages	Line 21 multiplied by line 24 (U.S. Total)	xxx		25
26	Each Road's Requirement to Protect Potential Interline Originations	1/3 of Line 21 multiplied by line 19			26
27	Remaining Requirement to Protect Potential Interline Use	Line 25 minus line 26 (U.S. Total)	xxx		27
28	Each Road's Requirement to Protect Potential Interline Use	1/3 of Line 27 (U.S. Total) multiplied by line 6 (Individual Railroad)		xxx	28
29	Each Road's Requirement to Protect Potential Interline Originations and Use	Line 26 plus line 28		xxx	29
30	Total Obligation to Protect All Traffic	Line 8 plus line 10 plus line 22 plus line 29		xxx	30
31	Excess or Deficit of Ownership	Line 30 minus line 11		Deficit	31
				Excess	

United States Totals Shall be Provided to Individual Railroads for the Following Items.

Line No. 2—Total Serviceable Interline Car Days
Line No. 6—"No Day" Car Days
Line No. 9—Obligation to Protect Interline Traffic
Line No. 13—Percent of Car Service Rules Observance
Line No. 16—Serviceable Ownership Reduction Due to Car Service Rules Observance Credit
Line No. 17—Serviceable Interline Ownership Obligation After Allowing Car Service Rule Credit
Line No. 21—Average Daily Unfilled Orders-Interline Service
Line No. 23—Total Cars Loaded and Delivered to Connections
Line No. 25—Total Cars Needed to Protect Interline Shortages
Line No. 26—Each Roads Requirement to Protect Potential Interline Originations

[1] Sum of Line 2 plus line 4
[2] Sum of Line 16 plus line 17
[3] Line 2 divided by line 23

Prepared By:_____

Title_____ Date_____, 19__

Reporting Railroad_____

EX PARTE NO. 241, INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP

GENERAL INSTRUCTIONS

The information for this study should be collected and reported for the month of October (October 1 to October 31, 1970) and each October thereafter until further notice of the Commission. The information is to be reported by Class I Line-Haul Railroads, Class II Line-Haul Railroads, and Switching & Terminal Companies.

COMPLETION OF FORM

The data sheet is to be completed by each railroad in accordance with the instructions and mailed to the Director, Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, as soon as completed but no later than December 31 of each year. Each reporting railroad must maintain and have available for inspection adequate records to substantiate all items of data reported. These records shall be retained at least 2 years from the date of the reporting period.

TYPES OF REVENUE CARS TO BE REPORTED

The data to be reported shall be for general purpose cars only as shown below:

PLAIN BOX CARS - XM,XMI,XMIH,VA,VM,XC,XCI,XU

40' Narrow Door	B100,101,105,106,110,111,115,116,120,121,125,126,040,050,060,070,080
40' Wide Door	B102,103,104,107,108,109,112,113,114,117,118,119,122,123,124,127,128,129
50'	B200-209,210-219,220-229
61' and Over	B300-309,310-319,320-329

PLAIN GONDOLAS - GA,GB,GD,GH,GRA,GT,GS

Under 61'	G101,102,201,202,301,302,111,112,211,212,311,312,121,122,221,222,321,322, 131,132,231,232,331,332,141,142,241,242,341,342,151,152,251,252,351,352, 161,162,261,262,361,362,171,172,271,272,371,372,181,182,281,282,381,382, 091,092,291,292,391,392
61' and Over	G401,402,411,412,421,422,431,432,441,442,451,452,461,462,471,472,481,482, 491,492

HOPPERS - HD,HE,HFA,HK,HM,HT,HTA,HTC

General Service	H100,200,300,110,210,310,120,220,320,130,230,330,140,240,340,150,250,350, 160,260,360,170,270,370

FLAT - FM

General Service	F101-109,201-209

SPECIFIC INSTRUCTIONS

All statistics reported must be supported by actual records. If there are no data to be reported for a particular item, leave the space blank. Do not insert dashes or zeroes. All data are to be reported for Home and Foreign cars as indicated on the data sheet.

Line No. 1 and Line No. 2 - CARS OWNED AND LEASED

This information will be the same as that reported to the Association of American Railroads on their Form CS-11, Col. (A) for the first of the month, October 1 and November 1.

Line No. 3 - AVERAGE NUMBER OF CARS OWNED AND LEASED - OCTOBER

This figure is developed by adding lines 1 and 2 and dividing by 2 to arrive at the average number of cars owned and leased during the month.

Line No. 4 - CAR DAYS OF CARS OWNED AND LEASED - OCTOBER

This figure is developed by multiplying the average number of cars shown in line No. 3 by the number of days in the month (31).

Line No. 5 and Line No. 6 - CARS ON LINE - BAD ORDER - END OF MONTH PRECEDING STUDY AND END OF MONTH OF STUDY

This information will be the same as that reported to the Association of American Railroads on their Form CS-60, Col. (6) which is for the end of a month, September 30 and October 31.

SPECIFIC INSTRUCTIONS–Continued

Line No. 7 - AVERAGE NUMBER OF BAD ORDER CARS ON LINE - OCTOBER
This figure is developed by adding lines 5 and 6 and dividing the result by 2 to arrive at the average number of owned and leased cars which are bad order during the month.

Line No. 8 - BAD ORDER CAR DAYS ON LINE - OCTOBER
This figure is developed by multiplying the result shown in line No. 7 (Home and Foreign) by the number of days in the month (31).

CARS LOADED ON LINE AND LOADED CARS RECEIVED FROM CONNECTIONS

Line No. 9 - LOCAL
Report all cars, Home and Foreign, that originated on your line during the month and terminated on your line.

Line No. 10 - INTERLINE FORWARDED
Report all cars, Home and Foreign, that originated on your line during the month and were delivered to connections in interline service.

Line No. 9 - LOCAL and Line No. 10 - INTERLINE FORWARDED
The following interpretations of switching services are provided for your guidance:
"Line-Haul Cars Handled in Switching Service":
Cars loaded in switching service for initial road-haul movement by connection to be reported by the road-haul carriers performing the billing of cars.

"Cars Handled in Intra and Inter-terminal Switching":
Cars loaded for intra-terminal or inter-terminal switch movement only (no road-haul) to be reported by the loading road if load terminates on loading road or as interline forwarded if for unloading on a connecting line.

Line No. 11 - INTERLINE RECEIVED
Report all cars, Home and Foreign, received loaded during the month in interline service from connections and terminated on your line.

Line No. 12 - BRIDGED
Report all cars, Home and Foreign, that were received loaded during the month in interline service from connections and delivered to connecting lines.

Line No. 13 - TOTAL
This figure represents the sum of lines 9,10,11 and 12.

DETAIL OF CAR DAYS

ADJUSTMENTS: Car days shall be reported for the month of October as evidenced by the Per Diem Report. Adjustments of System Car Days Off Line, Foreign Car Days on Line and Reclaim Days Paid and Received shall be forwarded to the Commission, after such adjustments are determined. This adjustment shall include all items reported by your road for the months of November, December, and January with an estimate of System Car Days Off Line and Foreign Car Days on Line that will be settled through the Per Diem Discrepancy Claim Procedure. This adjustment must be filed with the Commission no later than March 31.

Line No. 14 - SYSTEM CAR DAYS OFF LINE
Report the number of car days reported to owner by user roads for the month of October in the October Per Diem Report. See note regarding adjustments.

Line No. 15 - FOREIGN CAR DAYS ON LINE
Report car days reported by user roads to car owner for the month of October in the October Per Diem Report. See note regarding adjustments.

Line No. 16 - SWITCH AND OTHER RECLAIM DAYS PAID
Report the number of days paid to the user of your cars under the reclaim agreement during the month. See note regarding adjustments.

DETAIL OF CAR DAYS - Continued

Line No. 17 - SWITCH AND OTHER RECLAIM DAYS RECEIVED

Report the number days received from owners of cars under the reclaim agreement during the month. See note regarding adjustments.

Line No. 18 - RULE 22 RECLAIM DAYS PAID

Report the number of days paid to the user of your cars under the reclaim agreement during the month. See note regarding adjustments.

Line No. 19 - RULE 22 RECLAIM DAYS RECEIVED

Report the number of days received from owners of cars under the reclaim agreement during the month. See note regarding adjustments.

Line No. 20 - "NO DAY" CAR DAYS

Report all "No Day" car days based on all cars that are received after 12:01 a.m. and delivered off line prior to 11:59 p.m. on the same calendar day. Car days reported represent the total car hours during the month accumulated by each car type divided by 24.

OTHER CAR STATISTICS

Line No. 21 - TURNAROUND TIME OF LOCAL CARS

Car days used to develop turnaround time of cars used in local service to be calculated from date of loading to date of next loading (extending into November, if applicable) with a maximum of 31 days for any one car. Cars loaded in local service and not reloaded but delivered empty to connecting line will not be used in determining local turnaround time.

Line No. 22 - NUMBER OF CARS STUDIED TO DETERMINE TURNAROUND TIME

Report the number of cars used in determining the local turnaround time as reported in line No. 21. The reporting road should be satisfied the number of cars studied is sufficient to represent local turnaround.

Line No. 23 - AVERAGE DAYS PER CAR LOADED AND DELIVERED TO CONNECTIONS

Car days used to develop average to be calculated from date of release empty from previous load or receipt empty in interchange to time of delivery of loaded car off line (using September or November records if necessary) with a maximum of 31 days for any one car.

Line No. 24 - NUMBER OF CARS STUDIED TO DEVELOP AVERAGE AS SHOWN IN LINE 23

Reporting road should be satisfied the number of cars studied is sufficient to represent car days per car in interline forwarded service.

Lines Nos. 25 and 26 - AVERAGE DAILY UNFILLED ORDERS - FOR LOCAL SERVICE & AVERAGE DAILY UNFILLED ORDERS - FOR INTERLINE SERVICE

Local and interline seperation of total average daily unfilled orders for each required car type should be developed from individual carrier's records if available; otherwise, distributed in the same proportion as the ratio between local and interline forwarded loadings as reported in lines Nos. 9 and 10. The average daily unfilled orders shown is to be reported in conformity with instructions on AAR Form CS-44 (Revised 7/1/69). The average daily for the month will be the sum of the weeks divided by 4.

Line No. 27 - AVERAGE DAILY CARS IN EXCESS OF ORDERS

Average daily cars in excess of orders should be reported in conformity with instructions on AAR Form CS-44 (Revised 7/1/69). The average daily for the month will be the sum of the weeks divided by 4.

APPENDIX E

ORDER

Service Date
March 19, 1970

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 18th day of March, 1970.

EX PARTE NO. 241

INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES AND PRACTICES

Upon consideration of the record in the above-entitled proceeding, including the report of Division 3, 335 I.C.C. 264, prescribing car service rules and other matters set forth in the appendices to that report; the order of the entire Commission, served February 25, 1970, modifying the said rules and other matters in certain respects, and setting the date for compliance with the requirements of said order as March 27, 1970; the petition of the Association of American Railroads (on behalf of the respondents) (Association) filed on March 17, 1970, seeking postponement of the effective date solely with Respect to Rules 1 and 2 set forth in Appendix G to the said report, until July 1, 1970; the telegraphic request of The Procter & Gamble Company in support of the Association; the petition of National Industrial Traffic League (NITL) for leave to file, and a petition to stay or postpone the effective date of the order served February 25, 1970, for at least 60 days beyond March 27, 1970, filed on March 17, 1970; the telegraphic request of the National Association of Shippers Advis-

tory Boards for postponement of the effective date until after the effective date of the order entered in *Chicago, B. & Q. R. Co.* v. *New York, S. & Western R. Co.*, 332 I.C.C. 176, filed March 13, 1970; the petition of the New Orleans Traffic and Transportation Bureau for postponement until at least 60 days beyond March 27, 1970, filed March 17, 1970; and the petition of Louisville and Nashville Railroad Company (L&N), the Chesapeake and Ohio Railway Company (C&O), the Baltimore and Ohio Railroad Company (B&O), and Norfolk and Western Railway Company (N&W), for postponement of the effective date of the order served February 25, 1970, for an unspecified period beyond March 27, 1970, filed on March 15, 1970; and

It appearing, That in seeking the postponement, the Association refers to the complexities of the specified Rules 1 and 2 in relation to actual operations, the variety of interpretations of those rules urged by members of the shipping public, and fears of the latter that application of the rules would adversely affect the orderly production and marketing of their products;

It further appearing, That the Association will seek to obtain maximum possible compliance with the said rules, so that all interested and affected parties may better judge the effect of mandatory application;

It further appearing, That the Association agrees that it will report to this Commission at the end of each 30 days concerning the results of its efforts to obtain maximum possible compliance;

It further appearing, That, in seeking postponement of all of the rules prescribed, the NITL, the National Association of Shippers Advisory Boards, and the New Orleans Traffic and Transportation Bureau, in substance, emphasize that additional time is

necessary to explore ways and means of removing the confusion and uncertainty surrounding mandatory application of the rules;

And it further appearing, That, in seeking postponement of all the rules prescribed, the L&N, C&O, B&O, and N&W, in substance, emphasize that additional time is needed to analyze the extent of the modifications and changes made in the report of Division 3, 335 I.C.C. 264, by the order of the Commission served February 25, 1970;

Wherefore, and for good cause shown:

It is ordered, That since the petition of the National Industrial Traffic League for stay or postponement of the effective date was seasonably filed, no action need be taken on its petition for leave to file;

It is further ordered, That, to the extent the petitioners seek postponement of the effective date of the terms of the order served February 25, 1970, with respect to Rules 1 and 2 specified above, the petitions be, and they are hereby, granted, and in all other respects, the petitions be, and they are hereby, denied;

It is further ordered, That, solely with respect to Rules 1 and 2 of Appendix G to the report of Division 3, as modified by the order of the Commission served February 25, 1970, the date for complying with the terms of the order served February 25, 1970, in this proceeding be, and it is hereby, postponed until July 1, 1970; with no further change in the said order.

And it is further ordered, That the Association be, and it is hereby, required to file with this Commission on April 20, 1970, May 20, 1970, and June 19, 1970, a report setting forth the results of its efforts to obtain maximum possible compliance with Rules 1 and 2 prescribed in Appendix G of the report of Divi-

sion 3, as modified by the order of the Commission served February 25, 1970, including a showing of the effect of compliance with the said order upon the carriers, shippers, and other parties of interest.

By the Commission.

H. NEIL GARSON,
Secretary

(SEAL)

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 70-182-Civ-J

[Filed June 7, 1971, Jacksonville, Fla.]

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, PLAINTIFF

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation, NORTHWESTERN PACIFIC RAILROAD COMPANY, a corporation, and SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY, a corporation, INTERVENING PLAINTIFFS

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MEMORANDUM OPINION AND FINAL JUDGMENT

Before SIMPSON, Circuit Judge, and SCOTT and TJOFLAT, District Judges.

SIMPSON, Circuit Judge:

This action was brought by Florida East Coast Railway Company (FEC) supported by the intervening lines (Southern Pacific or Southern Pacific Group) under Title 28, U.S.C., Sections 2321-2325 and 2284, to enjoin, annul, and set aside orders of the Interstate Commerce Commission (ICC or Com-

mission) which require the railroads, in accordance with an ICC-imposed formula, to file annual reports concerning their respective ownership of general purpose freight cars and to observe mandatory freight car service rules. The orders are based on investigations by the Commission in Commission docket number Ex Parte No. 241, styled *Investigation of Adequacies of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practice.* The proceedings before the Commission are reported at 335 I.C.C. 264, modified in 335 I.C.C. 874.

The Florida East Coast Railway Company (FEC) commenced this action by a complaint which attacks both the car ownership formula upon which the affected railroads are required to submit information to the Commission and the imposition of the mandatory car service rules. The Southern Pacific Group of railroads intervened as plaintiffs in the case and also attack both the car ownership formula and the mandatory car service rules as an arbitrary and capricious exercise of Commission power.

For years the Commission has been concerned with recurring complaints by shippers and Congress that there existed a national shortage of railroad freight cars. See, e.g., 268 I.C.C. 687 (1947). Early in the Commission's investigation it concluded that the problem would best be solved by committing it to the sound discretion of the management of the various railroads. In the early 1960's however, as the problem continued to be acute, the Commission issued its order July 29, 1964, in Docket Number 241, supra, to obtain detailed information regarding car ownership, utilization, distribution, rules, and practices which might bear on the alleged railroad car shortage. The railroads were ordered to file the requested information on forms provided by the Com-

mission. The evidence was submitted to the Commission in the form of these reports, verified statements of the railroads and shippers, and in an evidentiary hearing before a hearing examiner, requiring 50 hearing days to receive testimony and 120 Exhibits, and resulting in a transcript running to 5804 pages. On January 23, 1968, the hearing examiner filed his report asserting that the record did not contain competent evidence upon which to base a conclusion as to the adequacy of freight car ownership, and that the adoption of car ownership formula and car service rules had not been shown by the record to be justified.

Exceptions were filed to the hearing examiner's report, and Division 3 of the Commission overruled the hearing examiner, finding from the evidence adduced and official notice taken of congressional hearings, as well as from complaints to the Commission by shippers and studies inside and outside the Commission, that rail car shortages were largely the result of inadequacies in the ownership and utilization of freight cars. 335 I.C.C. 308-309. Division 3 for the Commission adopted a car ownership formula by which the railroads were to help assess the adequacy of the number of cars owned by each railroad. Each railroad was ordered to submit to the Commission reports showing the application of the adopted formula, and to report to the Commission what steps had been taken to cure the deficiencies indicated by the application of the formula, if any, or to provide reasons why such steps were not taken. The Commission also ordered that Car Service Rules 1, 2, 7, 15, 16, 17 and 18, which had earlier been adopted by the American Association of Railroads for voluntary observance, be made mandatory on the railroads.

On review of the action of Division 3 by the entire Commission, the Division decision was affirmed with Rule 19 (which prescribes the procedure for obtaining exceptions to the car service rules) also made mandatory. In other respects the full Commission affirmed the Division action. The Commission made July 1, 1970, the effective date for complying with the orders.

FEC filed its complaint on April 8, 1970. On June 5, 1970, the United States and the Commission filed a motion to dismiss the FEC complaint on grounds of lack of jurisdiction over the subject matter and of failure of the complaint to state a claim upon which relief could be granted. Southern Pacific then on June 22, 1970, moved to intervene and filed a motion for temporary restraining order against the car service rules portion of the Commission's order. On June 24, 1970, a temporary restraining order was issued by a single judge of this court preventing enforcement of Car Service Rules 1 and 2 pending adjudication of the merits by this court.[1] The government's motion to dismiss the action was deferred by the single judge for consideration by the full three-judge panel.[2]

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[1] On May 12, 1971, while the case was under submission to the court, pursuant to a motion by FEC a member of this court also granted a temporary restraining order staying the enforcement of the Commission order requiring the FEC to submit data to the Commission in accordance with the car ownership formula pending hearing by the full court on the merits of the cause. At oral argument counsel agreed that both temporary stays should continue in force pending our decision on the merits.

[2] This opinion and our order are based on the record before us and not on outside material, but we note that a recent book critical of the ICC, entitled *The Interstate Commerce Omission*, authored by the Ralph Nader Study Group, con-

THE CAR OWNERSHIP FORMULA

The formula approved by the Commission is an interline car-day formula. The formula contemplates that the car ownership requirements of the railroads will be determined by (1) computing the number of serviceable cars required to protect traffic actually carried by dividing serviceable car-days of cars on line by the number of days in October, the computation period; (2) computing the number of serviceable cars required to protect shortages by multiplying the reported shortages in October (reduced by 50%) allocated between local and interline on the basis of car loadings by the computed local turnaround time (serviceable car-days divided by carloads originated in local service) and by the national average turnaround time for interline service; and (3) computing the effect of the credit allowed to railroads loading foreign cars in October for interline movement.

It is the position of FEC that the car ownership formula is arbitrary and capricious as applied to the FEC, and discriminates against the FEC because of its position as a terminating line. As a stub end road running the length of the Florida peninsula along the east coast from Jacksonville to Miami, FEC terminates substantially more carloads of interline freight than it originates. This FEC area originates mainly fruit and vegetable shipments, handled by refrigerated cars and does not produce a substantial volume of traffic involving products capable of loading into

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tains a chapter dealing with alleged boxcar shortages. For further insight into the boxcar shortage controversy, reference may be made to an opinion rendered by a three-judge court of this district in a companion case, *Florida East Coast Railway Company* v. *United States and Interstate Commerce Commission*, 322 F.Supp. 725 (Feb. 18, 1971).

ordinary boxcars, the type of cars mainly used for the shipment of commodities into Florida. As a consequence FEC claims that it is habitually burdened with a substantial excess of foreign freight cars over the number required for loadings.

FEC states that while the Commission did not admit into evidence at the hearing any data applying the formula to particular railroads, independent study by the American Association of Railroads indicates that application of the formula to FEC will result in a finding that FEC has a car ownership shortage of some 2,053 freight cars. FEC contends that its purchase of these additional cars would require an expenditure in excess of 28 million dollars.

The crux of FEC's complaint is then that the formula as presently approved is arbitrary because it fails to take into consideration the special operational problems of a terminating railroad. FEC contends that the application of this formula will result in a completely unwarranted but predictable finding that the FEC is deficient in the ownership of railroad freight cars, and that the FEC will then be required to expend millions of dollars for cars which it cannot load and for traffic in which it cannot participate. FEC contends for example that the major freight car shortages occur in October when the West and Midwest grain harvests take place. FEC notes that Florida produces little grain which is loaded into general purpose freight cars, and that little grain from the West and Midwest is shipped over FEC lines for export, consumption or processing. FEC further points out that it does not participate in the shipment of coal, another industry which the Commission cited as suffering from a car shortage. The FEC states moreover that it will be totally unable, as a terminating line (as opposed to an essentially originating line) to

load with freight for out shipment the cars which the present formula will require it to purchase. The further argument goes that under the companion mandatory car service rules to be discussed infra, the FEC will not be able to require that the other railroads accept empty FEC cars for loading. Thus FEC argues that the mandatory car service rules further complicate the problem. FEC lastly contends that because of the peculiar application of the formula definitions of "serviceable car-days" and "turnaround time" to a terminating line, the FEC's inability to load the cars will result in an even greater showing of deficiency under the formula here attacked. This is said to point up the ludicrous nature of the formula since in this instance the fewer cars the FEC uses, the more cars the formula will operate to require it to purchase. These factors are the principal bases from which FEC argues that the formula is arbitrary and unreasonable in that it will result in a required purchase of millions of dollars of unneeded and unusable freight cars.

FEC also urges that the action of the Commission in reversing the examiner was based on matters outside the record which FEC had no opportunity to contest or cross-examine. This argument is bottomed largely upon this statement in the Commission order at 335 I.C.C. 308:

> From the evidence adduced, and official notice taken from Congressional hearings, numerous complaints by shippers to the Commission, and numerous studies made in and outside the Commission, we are convinced that there is a continuing freight car shortage which requires affirmative remedial action at this time. We believe that this situation results from a combination of inadequate ownership of general purpose

type freight cars by respondents as a group, and improper utilization of the available freight car fleet.

FEC contends that it has no way to ascertain from this Commission statement what materials were the subject of Commission notice, and further that it was given no opportunity to rebut the materials, in the face of the requirement of the Administrative Procedure Act that where rule-making is involved a party is entitled to an opportunity to rebut materials of which official notice is taken. Title 5, U.S.C., Section 556(d).

On oral argument counsel for the Commission placed this action in perspective by pointing out that the Commission proceeding under review in this action is one of a number of related proceedings in which the Commission has attacked the problems of car supply and distribution. We were referred to Commission hearings on basic car per diems, Docket Number 31,358, found at 332 I.C.C. 176. The ICC order was upheld by two 3-judge courts: *Union Pacific Railroad Co.* v. *United States*, D.Neb. 1969, 300 F. Supp. 319, and *Boston & Maine Railroad* v. *United States*, D. Mass. 1969, 297 F. Supp. 615. Both decisions were affirmed by the United States Supreme Court at 396 U.S. 27, 90 S.Ct. 196, 24 L.Ed.2d 142. Commission proceedings were also held relative to the imposition of the incentive car per diems, Docket Number 252, Sub 1, 337 I.C.C. 217, in response to the 1966 Congressional amendment to Section 114 of the Interstate Commerce Act. That proceeding was attacked and held invalid in a companion case before this Court. See footnote 2. A 3-judge statutory court of the Eastern District of New York reached the opposite conclusion in *Long Island R. R. Co.* v. *USA*

and ICC, 318 F.Supp. 490. *Long Island* was not appealed but the Middle District of Florida case is presently on appeal to the Supreme Court. A third proceeding involved Commission action to require consignees to clear and clean cars properly after use. This Commission directive is under attack in the district court for the District of Minnesota, in a case styled *Staley Manufacturing Company* v. *United States and Interstate Commerce Commission*, 4-69-Civ-459. The Commission in the past several years has also entered numerous Car Service orders dealing with specific emergency situations which were from time to time found to exist.

We agree with Commission counsel that it should have been obvious to all the affected railroads and to all others involved in the proceedings under review that the "numerous studies" referred to in the Commission order related to these other proceedings being conducted by the Commission, aimed at other aspects of the car shortage problem. The Commission citation of these other proceedings was merely additional support for a proposition which already is clear in this record; that is, the United States has long suffered from a shortage of railroad freight cars. The numerous Commission proceedings directed at alleviating or correcting the freight car shortage were common knowledge in the railroad industry.

The FEC argument that they were prejudiced by the Commission reference to some mysterious source which evades the FEC is found to be not meritorious.

The record indicates that the Commission's Bureau of Accounts and its Bureau of Inquiry and Compliance (whose title was later changed to Bureau of Enforcement) understood and urged that the present formula might work a hardship on terminating lines. The Bureaus' brief to the Commission stated:

> Implementation of an interline car-day theory of ownership responsibility would require railroads whose interline traffic is predominantly terminations or overhead to increase their ownership in excess of their originations and would probably require some centralized national control of distribution, perhaps as firm and arbitrary as that employed by the Director General in distributing the national pool under World War I to assure equitable utilization of the excess ownership. (Bureau brief p. 51)

FEC contends that despite this warning the Commission failed to make adequate provision for the plight of the terminating railroad. Instead, the FEC charges that the Commission in attempting to remedy the Bureau's objection adopted a patently discriminatory "car service compliance credit" that further penalizes the FEC by imposing additional car ownership requirements because of the inability of the FEC to load empty foreign cars on its line.

In instituting the interline formula the Commission found:

> Both the Bureau of Accounts and the AAR directors advocate use of a so-called interline car-day formula which, in addition to providing sufficient ownership to protect a carrier's origination in local service, would insure that each railroad owns cars in numbers equal to its proportionate use of the national fleet in interline service. It is concluded that this type formula is equitable because interline service is a profit venture in which all roads participate to the extent of their proportionate use of the freight car fleet. Since an interline formula will be the most equitable means of establishing car ownership require-

> ments, we shall give no further consideration to the formula designed by the Bureau of Accounts which is based mainly on loads originated and which is shown in appendix D to the examiner's report. (335 I.C.C. at 304-05)

FEC argues however that the Commission's findings are without support in the record, contending that the approved formula does not insure that each railroad will own cars in numbers equal to its proportionate use of the national fleet in interline service. Rather, they say, the terms of the credit provision of the formula insure that terminating lines will supply a disproportionate share of the freight cars used.[3]

The Commission replies to all of this by requesting the court to dismiss the action for lack of ripeness. The Commission charges that at this time the formula is in a tentative and experimental stage without any substantial impact on the railroads. The ICC argues that for the present it considers the formula simply a rough guideline to the railroads of what the Commission believes each railroad's ownership requirements should be, and that neither FEC nor any other line has been actually ordered to purchase a single freight car in accordance with the formula. At this stage ICC says it merely requires that the railroads supply data showing hypothetical application of the formula, not dissimilar to information which the railroads are now supplying to the American Association of Railroads. Commission counsel on brief and in oral argument asserts that the Commission recognizes

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[3] FEC's apparent position is that any formula designed by the Commission for measuring freight car shortage of respective lines should be based primarily on the number of freight loads originated on each line.

imperfections in the present formula and that further modifications will likely be necessary and further studies required before settling on a formula equitable in application to all railroads. Since the formula may be expected to undergo substantial changes before it is adopted in final form and because no purchases of railroad cars by any line in accordance with any formula have yet been required, ICC asserts that the lack of administrative finality renders the controversy not yet ripe for judicial intervention.

The FEC replies that *Frozen Food Express* v. *United States*, 1956, 351 U.S. 40, 76 S.Ct. 574, 100 L.Ed. 917, is conclusive authority for the proposition that the Commission's action with respect to the car ownership formula is now ripe for adjudication under Section 17(9) of the Interstate Commerce Act, Title 49, U.S.C., Section 17(9).

We think, however, that the FEC misapplies the holding of *Frozen Foods Express*. There the holding by the Court was that a finding by the Commission that a commodity was not an exempt agricultural product had "immediate and practical impact" on carriers who were transporting the commodity because transportation of such commodity without Commission approval subjected the carrier to a broad assortment of sanctions. As explicated above, the order in Docket 241 presently requires no more than that the railroads file reports in accordance with the approved formula. Beyond cavil the Commission has the authority to require the filing of such reports under the provisions of Section 20(1) of the Interstate Commerce Act, Title 49, U.S.C. Section 20(1) which reads:

> "The Commission is hereby authorized to require annual, periodical, or special reports from

carriers, lessors, and associations (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, * * *"

The carrier railroads at this time suffer no "immediate and practical impact" from the order apart from being required to file reports within the scope of Commission authority under the statute. This case more nearly partakes of the nature of a case distinguished in *Frozen Foods: United States* v. *Los Angeles R. Co.*, 1927, 273 U.S. 299, 47 S.Ct. 413, 71 L.Ed. 651. In *Los Angeles R. Co.* the Supreme Court held nonreviewable a Commission report which "might never be the basis for a proceeding before the Court". This latter statement is strikingly reminiscent of the case at hand, where the Commission acknowledges that its provisional formula is less than perfect and may require modification to meet the objections of particular carriers. It is conceivable that the formula in its present state will never be the basis for a Commission order actually to purchase freight cars. Our mission as an Article III court is to decide actual cases or controversies, not potential cases or controversies. We should not decide cases where the orders of the Commission have no "immediate and practical impact" on the carrier, and where further action within the agency might avoid the predicted dispute altogether. We find nothing in *Columbia Broadcasting System* v. *United States*, 1942, 316 U.S. 407, 62 S.Ct. 1194, 86 L.Ed. 1563, and *Gardner* v. *Toilet Goods Association*, 1967, 387 U.S. 167, 87 S.Ct. 1526, 18 L.Ed.2d 704, which is inconsistent with this conclusion. We there-

fore find that the agency action lacks the degree of finality requisite to judicial review and accordingly grant the motion of the United States and the Commission to dismiss this action insofar as it relates to the car ownership formula, without prejudice to the right of FEC or the Southern Pacific Group to seek relief in court at such time as an actual controversy has ripened.

MANDATORY CAR SERVICE RULES

In this portion of the suit the FEC and the Southern Pacific Group attack the imposition of mandatory car service rules as being without sufficient support in the record.[4] The Commission contests this assertion, and we find no basis for us to set aside the action of the Commission in requiring mandatory observance of the car service rules already in effect by voluntary agreement.

Car service rules were not invented by the Commission. They were initially devised by the railroads' trade organization, the Association of American Railroads, to secure the prompt and expeditious use of freight cars. There was a dispute at oral argument between opposing counsel as to the extent to which the railroads were bound by the rules promulgated by the

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[4] Although the plaintiff and intervenors challenge all of the mandatory car service rules, on brief and at oral argument their attention focused almost entirely on Car Service Rules 1 and 2. Car Service Rule 1 provides generally that cars of other ownership in possession of a railroad at a junction or common point with the owner must be delivered empty to the owner, or shall be loaded at that point to or via the owner's line. Car Service Rule 2 applies to foreign cars which are unloaded elsewhere and provides that the foreign car shall either be returned empty to the owner, delivered empty to the road from which the car was received under load, or may be loaded to or via the owner's line.

Association of American Railroads, but it seems to us clear that the railroads entered into an agreement to abide by and to enforce the car service rules.

The Commission contends that if the railroads had only lived up to their agreement to operate in accordance with the voluntary car service rules, further Commission action in this regard would be unnecessary. However, the Commission contends that the rules were observed more in the breach than in the compliance. Hence the Commission contends that the mandate to observe the car service rules is simply a Commission effort to put teeth in regulations which the railroads themselves recognized long ago as necessary to the efficient movement of rail traffic. Further the Commission cites numerous verified statements by shippers and railroads during the proceedings before the Commission which in varying manners expressed the need for better enforcement of the car service rules.[5]

Review of the evidence indicates that considerable testimony was presented on both sides of the question. Certainly all witnesses were not in agreement as to the advisability of instituting mandatory car service rules. If we had initial responsibility for decision of this case we might or might not weigh the evidence in the same manner or reach the conclusion reached by the Commission. Our review un-

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[5] Record references include: Boston and Main verified statement 7, page 30; Great Northern verified statement 19, pages 2-3; Missouri Pacific verified statement 11, page 3; Norfolk and Western verified statement 15, page 10; Northern Pacific verified statement 16, pages 6, 12, 13; Penn Central verified statement 17, page 11; National Industrial Traffic League verified statement 25, page 9; American Short Line Railroad Association verified statement 22, page 11; American Plywood Association verified statement 27, page 10.

der the Administrative Procedure Act, Title 5, U.S.C., Section 706, is limited to ascertaining whether there was substantial evidence in the record for the Commission decision. We find no difficulty in determining that the Commission action was based on substantial evidence.

That the mandatory car service rules do not by themselves correct all of the car shortage problems is irrelevant. The Commission recognized that the car shortage issue presented problems of gargantuan dimensions requiring attack across a wide front. The Commission stated at 335 I.C.C. 294:

> * * * They are not designed to improve the utilization of freight cars, except insofar as return loading is compatible with the primary objective of increasing availability of cars to the owner. Thus, improved utilization will be largely in control of the owner who can then provide for the needs of his shippers for whom the equipment was acquired. The greater availability of owned cars rather than haphazard reliance on the supply of foreign cars will provide the owner with an opportunity to measure more accurately its ownership requirements. It will also permit the owner to maintain the car in a condition suitable for use when it is returned. Enforcement of the rules will shift the responsibility for shortages to the railroad with inadequate ownership and compel such a railroad to increase its fleet and to provide better maintenance for its cars. If a railroad has assurances that it can secure frequent and repeated loadings of its own cars, and if it is prohibited from indiscriminate use of misloading on someone else's cars, it will tend to correct any ownership deficiencies it may have. Moreover, once it is in

a position to know that ownership levels it must maintain, it will also be able to justify the investment required.

We take due note of the decision of the statutory 3-judge district court in *Allegheny Ludlum Steel Corporation* v. *United States and Interstate Commerce Commission*, Civil Action 70-731, W.D. Pa. March 1971, which found that the imposition of mandatory car service rules did not meet the reasonableness requirements of Title 49, U.S.C. Section 1(14)(a). That court found that the Commission order was deficient primarily in that it failed to contain a finding of specific freight car shortage in the owner lines, and secondly because the Commission conceded that it would be unreasonable to expect total compliance with the mandatory car service rules.

With deference to the court deciding it, we think the holding in that case was wrong. We decline to follow it. In the first place we view the Commission explanation of the imposition of the rules, supra, as demonstrating that the *Allegheny Ludlum* court missed the point in faulting the Commission for failure to make a specific finding of a shortage in railroad cars on the owner lines. The Commission did make a finding, acknowledged in fact by the Pennsylvania court, that the freight car shortage was *all pervasive* throughout the United States. Considering this finding and the expertise which is committed to the Commission in governing interstate carriers, we think that the Commission acted lawfully in instituting an equitable policy which during a freight car shortage would operate to reward the owner lines by giving them maximum use of the cars in which they had invested. Put another way, the mandatory

car service rules are basically undergirded by the proposition that when a shortage of freight cars arises, the effect of the shortage should bear most heavily on the railroads which have failed to purchase an adequate car supply. The question is not, as the Pennsylvania court posed it, whether the shortage on the owner lines is more acute, but rather who should get first call on the use of cars during a shortage. Correctly stated then, we view the question as properly answered in the policy decision of the Commission to institute rules which would provide the greater usage to the owner lines.

The other major objection which the *Allegheny Ludlum* court raised to the mandatory car service rules was the Commission acknowledgment that a number of exceptions would be required daily to insure the proper flexibility in the use of rail cars. The Pennsylvania court reasoned that this admission that full compliance was impossible coupled with the possibility of criminal sanctions for non-compliance rendered the mandatory nature of the car service rules unreasonable. We disagree. The Commission likewise tells us that full compliance cannot be expected. We think that this is really nothing more than recognition that it is a rare rule which has no exceptions in practical application.

That the Commission recognizes that the most efficient use of rail cars in some specific situations might require exceptions to the rules does not mean that the Commission cannot *reasonably* proceed from a mandatory rule where, as here, proper machinery has been established for the allowance of those exceptions. To insure that the exceptions do not swallow the rules and to assure a national policy on the granting of exceptions, the Commission has established a national service to which the railroads will

submit requests for exceptions from the rules. The plaintiff and intervening roads claim that the Commission Bureau is far too under-staffed to handle all of the numerous daily requests for exceptions that will be produced in the fast-moving railroad business. We do not minimize the seriousness of this problem, but we think that it is a matter of administrative detail which can be left to the Commission to handle as procedures are developed for expeditious handling of requests for exceptions. These relatively minor "rough edges" on the Commission's plan should not be allowed to upset what we think is an otherwise reasonable agency plan to attack one phase of freight car shortages.

We therefore find the reasoning of the *Allegheny Ludlum* court unpersuasive. Our independent examination of the issue leads us to conclude that the mandatory car service rules constitute a reasonable exercise of Commission power, based upon substantial and sufficient evidence in the record before the Commission.

In consideration of the foregoing,

IT IS ORDERED:

1. This action is dismissed without prejudice as it pertains to relief from the car ownership formula.

2. The petitions for relief, enjoining, annulling and setting aside the mandatory car service rules are in all respects denied.

3. The temporary restraining orders entered by Judge McRae on June 24, 1970, and by Judge Simpson on May 12, 1971, enjoining enforcement of the Commission orders pending determination of this action are continued in effect for a period of 20 days following the date hereof, to permit an application to the Supreme Court of the United States or a Jus-

tice thereof for a temporary further stay in connection with appeal. Upon the expiration of said 20 days our temporary restraining orders are vacated and set aside.

4. This Memorandum Opinion and Judgment shall constitute the Final Judgment of this Court as to all issues presented in this action.

DONE and ORDERED this June 7, 1971.

/s/ Bryan Simpson
United States Circuit Judge

/s/ Charles R. Scott
United States District Judge

/s/ Gerald B. Tjoflat
United States District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-731

ALLEGHENY-LUDLUM STEEL CORP., PLAINTIFFS

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

NOTICE OF APPEAL

[Filed May 17, 1971]

I. Notice is hereby given that the United States of America, one of the defendants in the above-entitled action, hereby appeals to the Supreme Court of the United States from the opinion and order of this Court dated March 18, 1971. This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The entire record in this action is hereby designated for certification by the Clerk of the District Court to the Clerk of the Supreme Court. The Clerk of the District Court is requested to prepare and to transmit the entire record to the Clerk of the Supreme Court.

This the 14th day of May, 1971.

/s/ John H. D. Wigger
JOHN H. D. WIGGER
Attorney
Department of Justice
Washington, D.C. 20530

RICHARD W. MCLAREN
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APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

Civil Action No. 70-731

ALLEGHENY-LUDLUM STEEL CORPORATION, ET AL.,
PLAINTIFFS

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, DEFENDANTS

NOTICE OF APPEAL
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This the 14th day of May, 1971.

/s/ James F. Tao
JAMES F. TAO
Attorney
Interstate Commerce Commission
Washington, D. C. 20423

/s/ Fritz R. Kahn
FRITZ R. KAHN
General Counsel

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COURT, U. S.
Supreme Court, U.S.
FILED
OCT 15 1971
ER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-227

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants,*

v.

ALLEGHENY-LUDLUM STEEL CORPORATION, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM OF ASSOCIATION OF AMERICAN RAILROADS

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October, 1971

TABLE OF CONTENTS

	Page
Motion	1
Statement	2
Argument	4
I. The Questions Presented Are Not Substantial	5
II. The District Court's Opinion Is Clearly Correct And Should Be Affirmed	8
Conclusion	17
Appendix A: Commission's Order of July 29, 1964	18
Appendix B: Commission's Order of August 23, 1966	29
Appendix C: National Transportation Policy	31

INDEX TO CITATIONS

Cases:

American Trucking Ass'ns. v. *United States,* 364 U.S. 1 (1960)	9
Atlantic Coast Line v. *United States,* 112 F. Supp 594 (1953)	8
Bingler v. *Johnson,* 394 U.S. 741	6
Burlington Truck Lines v. *United States,* 371 U.S. 156 (1962)	9, 16
Car Service, Freight Cars, 268 I.C.C. 687 (1947)	12
Chicago Junction Case, 264 U.S. 258 (1924)	16
Chicago, Rock Island & Pacific Ry. Co. v. *United States,* 284 U.S. 80 (1931)	16
F. T. C. v. *Standard Oil Co.,* 355 U.S. 396 (1957)	7
Florida v. *United States,* 282 U.S. 194 (1931)	9
Florida East Coast Ry. v. *United States,* 327 F.Supp 1076 (M.D. Fla. 1971)	5
Incentive Per Diem Charges, 332 I.C.C. 11 (1967)	8, 13
Interstate Com. Comm'n v. *Louisville & Nashville R.R.,* 227 U.S. 88 (1913)	16
Investigation of Adequacy of Freight Car Ownership, 323 I.C.C. 48 (Interim Report, 1964)	2, 9

Index to Citations, Continued

	Page
Investigation of Adequacy of Freight Car Ownership, 335 I.C.C. 264 (Commission Report, 1969)	2
Iversen v. *United States*, 63 F. Supp. 1001 (D.C.D.C., 1946)	8
Marine Space Enclosures, Inc. v. *F. M. C.*, 420 F.2d 577 (1969)	13
National Labor Rel. Bd. v. *Brown*, 380 U.S. 278 (1965)	14
Palmer v. *United States*, 75 F. Supp. 63 (D.C.D.C. 1947)	8, 10
Retail Store Employees v. *N. L. R. B.*, 360 F. 2d 494 (1965)	15
Schaffer Transp. Co. v. *United States*, 355 U.S. 83 (1957)	12
Secretary of Agriculture v. *United States*, 347 U.S. 645 (1954)	13
Securities and Exchange Comm. v. *Chenery Corp.*, 332 U.S. 194 (1947)	14, 16
Soo Line R. R. v. *United States*, 280 F. Supp. 907 (D. Minn., 1968)	9
Stanislaus County v. *United States*, 236 F. Supp. 146 (N.D. Cal. 1964)	15
United States v. *Champlin Refining Co.*, 341 U.S. 290 (1951)	6
United States v. *O'Malley*, 383 U.S. 627	6
United States v. *Southern Ry. Co.*, 250 F. Supp. 759 (1966)	14
Universal Camera Corp. v. *National Labor Rel. Bd.*, 340 U.S. 474 (1951)	7, 8, 15

Statutes:

Administrative Procedure Act, 5 U.S.C.	
Sec. 557(c)	15
Sec. 706	15
Interstate Commerce Act, 49 U.S.C.	
Sec. 1(14)(a)	13
National Transportation Policy (49 U.S.C., preceding § 1, (1940)	11, 12, 17

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-227

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants,*

v.

ALLEGHENY-LUDLUM STEEL CORPORATION, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM OF ASSOCIATION OF AMERICAN RAILROADS

Appellee, the Association of American Railroads, (hereinafter sometimes referred to as "Association"), pursuant to Rule 16(1)(c) and (d) of the Rules of this Court, moves that the final judgment and decree of the three-judge District Court be affirmed on the ground that the questions

presented are so unsubstantial and the decision below so eminently correct as not to warrant briefing or oral argument of the case before this Court.

STATEMENT

This is an appeal from a final judgment and decree entered on March 18, 1971, by a three-judge District Court, 325 F. Supp. 352 (J.S.,[1] App. A. and B), setting aside and enjoining enforcement of certain portions of a report and order entered by the Interstate Commerce Commission in a proceeding entitled Ex Parte No. 241, *Investigation of Adequacy of Railroad Freight Car Ownership, Utilization, Distribution, Rules and Practices,* 335 I.C.C. 264, (J.S., App. C, D, and E).

An investigation was instituted by the Commission, on its own motion, on December 20, 1963, "for the purpose of ascertaining the adequacy of railroad freight car ownership." All Class I railroads and a selected group of Class II railroads and switching and terminal companies were made respondents. The investigation was conducted without benefit of oral hearing, and on June 18, 1964, Division 3 of the Commission entered an interim report (323 I.C.C. 48) in which it concluded that further study was necessary. By order of July 29, 1964, (App. A, *infra*), Division 3 of the Commission broadened the investigation "for the purpose of obtaining detailed and precise information on all phases of freight car ownership, utilization, distribution, rules and practices, which in any manner contribute to or affect the chronic freight car shortage problem, with the view (1) to consideration of the prescription of rules designed to alleviate the problem, and (2) to consideration of the issuance of an order or direction under the provisions of Section 1(13) of the Interstate Commerce Act." This order again named only Class I railroads and a

[1] J.S. as used herein refers to Government's jurisdictional statement.

selected group of Class II railroads and switching and terminal companies as respondents (App. A, *infra*, pp. 22-28).[2]

Numerous verified statements, reply statements, and exhibits were filed with the Commission. Evidentiary hearings were held before a Hearing Examiner, beginning on March 28, 1967, and ending on August 11, 1967, for a total of 50 days. The transcript of oral testimony exceeded 5,800 pages. In a recommended report evidencing meticulous and comprehensive review of the record, and observation of the witnesses, the Examiner concluded that:

> "Upon considering all of the evidence the hearing examiner finds that the record does not contain competent evidence upon which to base a conclusion as to the adequacy of freight car ownership; and that the adoption of the proposed car ownership formula, regulations, and car service rules has not been shown to be justified." (Examiner's Report, p. 63).

Approximately eighteen months later, Division 3, largely and sometimes entirely, ignoring the Examiner's recommended report and findings, entered a report (J.S. App. C, pp. 28-166) and order prescribing the car service rules here in issue for mandatory observance by the theretofore specifically named railroads (J.S., App. C, pp. 167-168).

Petitions for Reconsideration were filed by the Association, numerous individual railroads and shippers, and shipper organizations. By order of February 18, 1970 (J.S., App. D), the Commission denied the petitions, adopted

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[2] By its express terms the Commission's order here involved runs only against such named railroads. Many common carrier railroads originating and terminating freight traffic are not subject to the order. There is no validity, therefore, to the assertion in the Government's jurisdictional statement that the rules ordered by the Commission "govern the disposition of freight cars of all the nation's railroads" and "must be uniformly applied to all roads to avoid discrimination and inequities" (J.S., pp. 7-8). (For more detailed discussion see p. 16, *infra*.)

an exception provision as its Rule 19, and ordered the prescribed car service rules to become effective March 27, 1970. The effective date with respect to Rules 1 and 2 was postponed to July 1, 1970.

On June 23, 1970, fifteen steel companies and the American Iron and Steel Institute filed this action to enjoin and set aside the Commission's order to the extent it required mandatory observance of Car Service Rules 1 and 2. The Association, the National Industrial Traffic League, and the National Association of Shippers Advisory Boards intervened as parties plaintiff.

After reviewing the record as a whole, the District Court unanimously concluded that the Commission's rules and order did not meet the test of reasonableness, and pointed to three major deficiencies inherent in the Commission's report: "(1) a failure to find a specific freight car shortage in the owner-lines; (2) a failure to consider the financial effects upon the owner-lines and the shipping public; and (3) a concession that there cannot be more than 80 percent enforcement of regulations, the violation of which carries criminal penalties" (J.S., p. 25).[3] The Court then permanently enjoined the Interstate Commerce Commission "from enforcing or attempting to enforce that part of the orders of the Commission entered August 21, 1969, February 18, 1970, and March 18, 1970, which direct and require respondent railroads to comply effective July 1, 1970, with Rules 1 and 2" (J.S., p. 27).

ARGUMENT

The questions presented by this appeal are: (1) whether the Commission's order lacks the support of essential find-

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[3] This disposition of the case made it unnecessary for the District Court to decide other grounds upon which plaintiffs challenged the lawfulness and validity of the Commission's order, including the insufficiency of evidence to support such findings as the Commission did make.

ings, and (2) whether Car Service Rules 1 and 2 are reasonable rules when prescribed by the Commission for mandatory observance. The District Court held that the Commission's order did lack support of essential findings and that the rules were not reasonable when made mandatory by Commission order. Resolution of these questions by the District Court did not involve a ruling on constitutional or jurisdictional issues, or the application of any new, uncertain, or disputed principles of law. Its action is so eminently correct as to require affirmance by this Court.

I. The Questions Presented Are Not Substantial

This appeal presents no substantial questions or important issues of federal transportation law warranting plenary review by this Court. The Government states that "this case presents important issues of federal transportation law having pervasive effect upon all rail carriers, as well as shippers and consumers, in the nation." What are those issues? The jurisdictional statement certainly does not reveal any important issues of federal transportation law requiring plenary consideration by this Court. There are no constitutional or jurisdictional issues involved in this appeal. No one has questioned the Commission's power under the Interstate Commerce Act to deal with car shortages or to prescribe reasonable car service rules. There are no issues presented that require this Court to interpret or construe federal transportation statutes. The appeal simply is one presenting the normal questions involved in court review of regulatory agency action.

Review of the District Court's opinion is sought on the grounds that: (1) there exists a conflict of decisions by two district courts; and (2) the findings of the District Court are "not well founded" and are erroneous (J.S., pp. 7-9). The Government asserts that there is a conflict between the District Court's opinion below and that of a district court in *Florida East Coast Ry.* v. *United States*, 327 F. Supp. 1076 (J.S., App. F). Examination of the